In the Property Course of the United States

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE RELOJ CATTLE COMPANY, appellant, v.
THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

On the 29th day of May, A. D. 1897, the Reloj Cattle Company, claiming to be the owner in fee of a private land claim situate in the county of Cochise, Territory of Arizona, known as the San Pedro grant, filed its petition for the confirmation of the same (R., p. 1). This petition alleges that the plaintiff is the owner of said grant, which is alleged to contain 37,000 acres in the United States, and is shown by the sketch map attached to said petition to contain 19,000 acres in the Republic of Mexico, or a total of 56,000 acres within its exterior boundaries. The petition sets up a description of said grant by courses and distances from certain natural objects, and it is alleged in paragraph 9 of said petition

(R., 4) that the survey upon which plaintiff relies is one made by one H. G. Howe upon observations taken by him from the original monuments marking the corners of the grant to prominent mountain peaks in the vicinity and to monuments on the international boundary line between the United States of America and the Republic of Mexico, and that the map of said survey made by said Howe, and which appears as plaintiff's Exhibit A, opposite record page 6, shows, as nearly as may be, the location, boundaries, and number of acres of said grant. The discrepancy between this survey and the plat thereof and the survey made by a subsequent surveyor, which was relied upon at the trial, and a plat of which is attached to the amended petition, presently to be referred to, will be apparent on an inspection by the court.

The petition further alleges that plaintiff is the owner of the tract of land by virtue of certain instruments in writing, by which it had acquired from Rafael Elias, the owner of said original grant, title to all of the property which he had therein. Upon the trial of the cause there was no denial of the allegation that the plaintiff had succeeded, at least in part, to such title, if any, as was held by the original grantee.

The petition further alleges that the grant title bears date the 2d day of May, 1833, and was duly made, executed, and delivered by José Maria Mendosa, the treasurer-general of the free and sovereign State of Sonora, Republic of Mexico, in the name of the sovereignty of the said State of Sonora, under

and by virtue of article 11 of the general sovereign decree No. 70, which was passed on the 4th day of August, 1824, by the Sovereign Constituent Congress of the United States of Mexico, which article concedes to all of the States of the Republic of Mexico the rents or revenues which by said law are not reserved to the General Government, one of which revenues is the vacant lands within the States of the Republic, thereby confirming to the States the lands hereinbefore described.

The petition further alleges that by law passed May 20, 1825, No. 30, and other decrees subsequent thereto, the constituent congress of the State of Sonora and Sinaloa prescribed regulations for the sale of these lands of the said States of the Republic of Mexico.

It is further alleged that the initiatory proceedings in the steps taken to obtain the grant title to the land was by a petition dated the year 1820 or 1821, addressed to the governor intendente, who was then and there the officer of the Spanish Government in charge of and having exclusive jurisdiction in the matter of the sales of public lands in the precinct of Fronteras, in which precinct the lands petitioned for were situated; the said petition was made and signed by one José Jesus Perez, and upon said petition it is alleged that proceedings of survey, appraisement, information of competency, and publication were taken as required by the instructions and laws of the royal ordinances of the intendente of December 4, 1786, and that thereafter on the 5th day of July, 1822, at the city of

Arispe, in the State of Sonora, the tract of land petitioned for was sold by the proper officers of the Republic of Mexico to said Perez for the sum of \$190. That on July 6, 1822, the intendente ad interim of the province of Sonora and Sinaloa, minister and treasurer, Ignacio de Bustamante y Velasco, on submission to him of the foregoing proceedings, made order that the said José Jesus Perez pay into the treasury the sum of \$208.01, being the sum of \$190, together with costs and charges, and that report be made of the same to the superior board of the treasury for its approval or determination.

It is further alleged that on July 7, 1822, said sale was by the board of the provincial imperial treasury, sitting at the said city of Arispe, legally, publicly, and solemnly approved and referred to the superior board of the treasury for its approval or determination; and that thereafter and within the proper time, and to the proper officer, the said sum of \$190, together with the other costs and charges incident thereto, was paid into the national treasury of the Republic of Mexico; but that the said superior board of the treasury was abolished before approving said sale, and no further proceedings were taken in the matter of the sale until October 25, 1832, when proceedings were instituted to transfer the rights and title of the said José Jesus Perez to Rafael Elias, and to have the formal title to the said lands issued to the said Rafael Elias, and in accordance therewith, as above stated, on the 8th day of May, 1833, José Maria Mendoza, the treasurer-general of the said

State of Sonora, issued to the said Elias the final testimonio or evidence of title of said San Pedro grant, and the same was thereupon duly recorded in the proper records of the State of Sonora.

The petition further alleges that the petitioner is not in possession of the original grant title of 1833, the same being, according to its information and belief, in the hands of one of the owners to that part of the grant lying in the Republic of Mexico; and that for that reason the original grant could not be presented or delivered, but in lieu thereof there was presented and filed two copies of said document in the Spanish language, together with translations thereof, as required by the rules of the court.

It is further alleged that the claim had been presented by certain grantors of the petitioner to the surveyor-general of Arizona, as permitted by the act of Congress approved July 22, 1854, and that thereupon a report had been made by R. C. Hopkins, a duly authorized agent of the United States in land-grant matters, to the effect that the expediente of the said land grant was among the archives in the State of Sonora, in said Republic of Mexico, in the proper place, in the proper archives, and on proper paper, and that all the proceedings of survey, valuation, and sale were regular, the handwriting and signatures genuine, and the certificates showing the payment of the amount at which the land had been valued, and the record of the transfer of the same between said Perez and the said Rafael Elias, and the issuance of the formal title

to the said Elias, being all found properly recorded in proper form and in the proper place among said archives of the State of Sonora.

The petition also alleges that said grant was, at the time of the treaty, located and duly recorded in the archives of Mexico, and that there is on file and of record in the office of the surveyor-general of Arizona a report by one G. C. Wharton, apparently acting specially under instructions of the Commissioner of the General Land Office, in which said Wharton reports against said land grant, and further reports that the land described therein is situate in the State of Sonora, Mexico, but that said report is not made with full knowledge of the facts and is not upheld by the facts. It is also alleged that there is a similar report on file by one Thomas Borton, apparently acting under instructions of the surveyor-general of Arizona, but that petitioner is unable to determine from said report whether it approves or disapproves the said land-grant claim. The report of said Borton was introduced in evidence on the trial by plaintiff (R., 194). Mr. Borton also testified in the case as a witness for the Government (R., 90). It is further alleged that beyond what has just been stated, the said San Pedro grant had not been acted upon by Congress, or any other competent authority of the United States constituted by law for the adjustment of land titles within the Territory of Arizona.

It is further alleged that all proceedings in the matter of said grant were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in said grantee; that said grantee went into actual possession, use, and occupation of said grant and erected proper monuments, and that said grantee and his descendants and legal representatives have continued ever since until the present time in the actual possession, use, and occupation of the same and are now seized and possessed in fee thereof, and that petitioner is entitled to all of the lands embraced within the original survey of said grant lying within the said Territory of Arizona and the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map of said grant, filed with the petition as plaintiff's Exhibit A (R., 6).

The plaintiff also alleges on information and belief that there is no person in possession of said grant otherwise than by the lease or permission of the petitioner except one E. J. Roberts, who is made a party defendant.

On May 13, 1899, plaintiff filed an amended petition, which is in effect the same as the petition just quoted from, with the exception of the description of the premises claimed. In said amended petition it is on this point alleged (R., 12): That the map and survey made by said Howe and attached to the original petition as Exhibit A was made from calls of the grant papers and from observations taken by him from the original monuments marking the corners of said grant to prominent mountain peaks in the vicinity and to monuments of the international boundary line between

the United States and the Republic of Mexico; that owing to the death of said Howe, before the completion of said survey and the filing of the amended map, one Philip Contzen made an amended map and survey, said map being attached to the amended petition and introduced in evidence as plaintiff's Exhibit 28 (R., 204). The amended petition sets out in detail the boundaries of said grant in accordance with said map and survey, giving the courses and distances thereon, and alleging the grant to contain within the United States 38,622.06 acres, as against 37,000 acres on the survey made by Howe, as shown on plaintiff's Exhibit A (R., 6). On the trial of the cause the survey relied upon by plaintiff was that made by Contzen, and the same will be fully discussed hereinafter.

The answer of the United States, filed on June 1, 1899 (R., 15), puts in issue the allegations of the petition, denying the correctness of the surveys and maps of said Howe and said Contzen, and alleges that so far from said maps or surveys being correct, said tract, whether located according to quantity or courses and distances or natural objects mentioned in said alleged title, lies entirely south of the boundary line between the Republics of the United States and Mexico, and is thus without the jurisdiction of the court.

The answer of the United States also denies (R., 16) that the claim set forth and alleged in plaintiff's petition was at the date of the treaty a complete and perfect title and pleads the bar of the land-court statute, whereby all imperfect claims not filed within two years

from March 3, 1891, became forever barred, the petition in this cause, as above stated, not having been filed until May 29, 1897.

The answer of the United States also sets up that under and pursuant to proceedings of denouncement initiated on July 8, 1880, by the predecessors in title of the Reloi Cattle Company, the Government of Mexico measured off and delineated to said persons the legal area or cabida legal of 4 sitios mentioned in claimant's title papers; and in the same proceedings it was adjudged that the ranch of San Pedro has no known boundary or boundaries, and thus no surplus or demasias, and that said 4 sitios so measured off and delineated to said persons by the Mexican Government were and are located entirely within the Republic of Mexico, and that the claim herein sued for was thus entirely satisfied and discharged by the location of said 4 sitios within the Republic of Mexico. The answer accordingly prays that the petition be dismissed and the claim rejected. (R., 16.)

The cause came on for hearing on June 1, 1899 (R., 17), at which time there was offered in evidence by plaintiff a large number of documents showing succession in title by the Reloj Cattle Company to interests in the San Pedro grant lying north of the boundary line, held by certain of the heirs of the Rafael Elias above mentioned (R., 17). As it was not disputed on the trial of the cause that plaintiff had sufficient interest in the subject-matter of the suit to invoke the jurisdiction of the court, it is not deemed necessary to recite the contents of these documents.

Plaintiff introduced as Exhibit No. 2 (R., 17) a copy of the original expediente of the San Pedro grant; said copy and the translation thereof are found in the record, at pages 106 to 129. It is contended by the United States that the translation of said expediente filed by plaintiff is in a great many respects incorrect, and in the discussion of this case reference will be had to the Spanish copy and the translation thereof presented by the United States as its Exhibits No. 2 and 3. (R., 206 and 230, respectively).

From this expediente it appears that in the year 1821 one José de Jesus Perez presented the following petition to the governor intendent:

I, Don José de Jesus Perez, a resident of this capital, before your excellency, in conformity with law, and in accordance with the royal ordinance of Campo, laws, sanctions, and rescripts that treat of the royal and abbatial lands with which His Majesty (God preserve him) protects his vassals, as perquisites of his royal patrimony, appear and state: That, whereas I enjoy some property, acquired in the military service and by my own industry, without owning a place upon which to locate and bring them together (centruarlos), I apply to the superior authority of your excellency (with prior permission of my father) in order that, pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805, the depopulated place down the San Pedro River, situate in this province, toward the north, on the hostile frontier, close to the abandoned place of Las Nutrias, be considered as registered, in virtue of which I protest

that I will enter into composition with His Majesty (God preserve him) and will pay the quota or cost of its purchase, the royal half annate tax, and whatever else may be necessary, for such is rigorous justice with relation to what is stated. In this understanding I pray you to issue commission for the execution of the necessary proceeding, ocular examination, reconnoissance of the ground, survey, appraisement, publication, possession, and final sale of the 4 sitios, which will be surveyed for me in a square or oblong figure, according to the length or extent of the land and its direction, and in these terms I pray your excellency to defer to my just petition, by which I shall receive grace. I protest costs and whatever is necessary, etc.

José de Jesus Perez. [Rubric.]

The italics are the writer's, and the words thus italicized will be fully discussed hereinafter, as they have a very important bearing on the case.

On March 12, 1821, the foregoing petition (R., 231) was referred by the governor intendent, for survey, appraisement, and other customary proceedings, and for citation to the adjoining owners, with instructions that when concluded the proceedings were to be reported back for further action.

On May 3, 1821 (R., 232), a promotor fiscal, appraisers, and recorder of courses were appointed by Miguel Teran, constitutional alcalde of the district of Fronteras and judge surveyer of said registry. Thereupon (R., 232) said promotor fiscal accepted the duties of the position and took the oath to properly perform

the duties of his commission (R., 233); and at the same time (R., 233) the appraisers and recorder of courses also accepted said position and took the proper oath of office (R., 234), and were thereupon duly commissioned. On the same day, the said alcalde and judge surveyor, Miguel Teran, reciting (R., 234) that there are no adjoining owners to summon, directs that there be put up public notices summoning whomsoever might be thought to have a right, for May 6, at which time, as provided by said notice, any persons having interest in the matter would be heard, attended to, and respected.

To the notice last given, one Manuel Antunes replied, under date of May 17, 1821, his communication being written from the place of Terrenate. The communication of said Antunes was as follows:

Replying to your communication of the 16th instant, I will appear personally at the place to which I am summoned, at the survey of the lands which, on account of Don José de Jesus Perez, is being made on the San Pedro River, and I will there point out the lands which I find myself in disposition to immediately register until the final proceedings of composition with His Majesty are had, and in case said survey conflicts with the lands I shall point out and have held for the space of two years with my cattle, in that event I shall enter into opposition and contest for them as may be convenient to me. God preserve you many years.

Place of Terrenate, May 17, 1821.

MANUEL ANTUNES. [RUBRIC.]

It may be remarked here that the place of Terrenate is only a short distance west of the house and settlement of San Pedro, as will be hereinafter pointed out. (See defendant's Exhibit 8, opposite record page 326.)

On May 18, 1821, said alcalde was present at the premises claimed, accompanied by the promotor fiscal, measurers, appraisers, and recorder (R., 235) and also by the said Manuel Antunes. The proceedings of that day's survey, as recited in the expediente, were as follows:

In the field, place of San Pedro, on the 18th day of the current month and year, I, said alcalde, in the presence of the promotor fiscal, measurers, appraisers, and recorders, before those in my attendance, Don Manuel Antunes having appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river without any damage resulting to him in said direction, but going up the river he would be damaged, as he considered himself possessed of rights and the lands he has held included in the sitios which he expects from day to day will be adjudicated to him, to which, when stated by said Antunes and noticed by the attorney, Don Rafael Salas, the latter took exception on account of the delay that would result to the prejudice of his party by depriving him of the benefit of the water produced by the marsh (cienega) which is the mother of these pastures (ejidos), for which reason the survey in behalf of his principal would be useless; upon which operations Antunes and Salas contended until after being reconciled, to obviate inconveniences, expenses, and damages which might result to either of the parties in interest, they yielded and agreed to divide the water of the marsh in halves for the benefit of the farms, being obligated by this same act to preserve harmony, for they so obligated themselves, Antunes for himself and Salas in the name of his principal. In testimony of which I entered it as a minute, which the promotor fiscal and other assistants signed with me before those in my attendance, with whom I act in the ordinary manner, in default of a royal or public notary, there being none in the terms the law provides, to all of which I certify.

From said proceedings the following facts are apparent: The locus of the proposed purchase was the place of San Pedro; said Manuel Antunes, of Terrenate, had some interest in the premises sought to be purchased which he desired to have protected; he was willing that they should start the survey from the house of San Pedro down the river or northward (the San Pedro River running from south to north), and that he was unwilling that they should go up the river from the house of San Pedro, as he considered himself possessed of rights in that direction. To the position of Antunes the attorney for Perez took exception on the ground that to acquiesce in what he claimed would be to deprive Perez of the benefit of the water produced by the marsh (cienega), which is the mother of those pastures (ejidos), and for that reason the survey in behalf of Perez would be useless, and that thereupon Antunes and the attorney for Perez contended, but finally, in

the spirit of compromise, agreed to divide the water of the marsh (cienega) in half for the benefit of the farms. The relevancy of the feature of these proceedings of May 13, 1821, just recited, will be noted when the survey presented by claimant is considered. As just pointed out, the land sought to be purchased was at San Pedro; plaintiff's survey leaves San Pedro 5 or 6 miles to the south of its south boundary. The house of San Pedro, from said proceedings, was evidently an important call in the location of the grant on the ground, Autunes being willing that the land should be located from said house down the river and Perez claiming that it should be located up the river from said house, As the matter was compromised it is evident that the starting point of the land was up the river from the house. Plaintiff's survey of the grant, however, places the south boundary some 6 or 7 miles below the house of San Pedro. It is also evident from said proceeding that this initial point was arrived at by a division of a cienega, a short distance above the house of San Pedro. Plaintiff's survey makes no attempt to locate such cienega, and, indeed, the south boundary of said survey is a number of miles north of where said cienega must have been under the record of said proceedings above transcribed.

Antunes having been eliminated from the matter, the parties proceeded to a survey, the field notes of which, so far as it was made on May 18, 1821, being as follows (R., 236):

> On the same day, month, and year, being in the field and the parties in interest having

agreed, in the presence of the promotor fiscal and other assistants, I caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted fifty cords, the last of which terminated down the river from the house, on the edge of the ford, on the bank, where I had a cross monument placed, and from there there were measured and counted fifty cords, the last of which terminated in the same valley, at the edge of a hillock (loma), distant three cords, where I had a corner monument placed, and from it there were measured and counted fifty cords, the last of which terminated in front of the Guachuca Mountains, where I had a cross monument placed on a rocky hillock (loma), and from it there were measured and counted fifty cords, the last of which terminated on a cat's-claw (chinosa) table-land, where I had a corner monument placed, and from there there were measured and counted fifty cords, the last of which terminated in the canon of the Bachata (where I had a cross monument placed, general boundary and dividing rectangular corner, this side line enclosing, and in the figure of a true square, two hundred cords which make two and a half leagues); and from there, the compass being set up and taken the course northwest to southwest, there were measured and counted fifty cords, the last of which terminated in the middle of the valley of the San Pedro River, where I had a corner monument placed; and from there, on said course, there were measured and counted fifty cords, the last of which terminated just after crossing the river

at the edge of a hillock (loma), where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated in the Arrovo de las Baras, where I had a corner monument placed; and from it there were measured and counted another fifty cords, the last of which terminated in a thicket of dark brush, where I had a cross monument placed; and from it there were measured and counted fifty cords, the last of which terminated on the slope of the peak, where I had a monument placed, a general rectangular corner, this measurement enclosing two hundred and fifty cords, which make two and a half leagues for its side, with which, because of being now late, this operation was suspended, to be continued the following day. In testimony of which I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest, and those in my attendance with whom I act in the ordinary manner. I attest.

On May 19, 1821, said survey was resumed and completed, as set forth in the following entry (R, 237):

On the 19th day of said month and year, in the presence of the promotor fiscal and other assistants, being in the field, at the monument at the general rectangular corner and taking the course from nor hwest to southwest, there were measured and counted fifty cords, the last of which terminated in a dense thicket of brush, where I had a cross monument placed, and from it there were measured and counted

another fifty cords, the last of which terminated on the Arroyo del Malpais, where I had a corner monument placed, and from it there were measured and counted fifty cords, the last of which terminated on the rise to a red table land, where I had a cross monument placed, and from it there were measured and counted fifty cords, the last of which terminated on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner, and from it, taking the course from southwest to northwest, there were assumed to be enclosed and measured two hundred and fifty cords, which make two and a half leagues: with which operation there were located, the sides measured, surveyed, and the area determined of four sities of land for large stock without any prejudice resulting, thanks to the concurrence of the adjoining owners, and that it may serve the purposes of the law I entered it as a minute, which I signed with the promotor fiscal, assistants, party in interest, and those in my attendance with whom I act in ordinary manner according to law. I attest.

This survey will be considered in detail hereinafter, in connection with the other testimony in the cause.

The survey having been concluded, the alcalde and judge surveyor, on May 21, 1821 (R., 237), directed that an appraisement and valuation be made by the expert appraisers previously appointed, and thereupon said appraisers, in view of the ocular inspection and reconnoissance they had made of the lands at the time of their survey, appraised the first 3 sitios at \$60 each,

and the remaining one at \$10 (R., 238). Thereupon the said alcalde and judge surveyor, reciting that the "4 sitios of land for live stock" had been appraised and valued, required the proceedings to be forwarded to the promotor fiscal, for him to deduce, according to their condition, what he considers proper to the benefit of the public treasury.

On May 22, 1821, the promotor fiscal directed the judge surveyor to make inquiry as to whether Perez had the qualifications required by law, and whether he had sufficient property with which to protect these sitios, and finally whether great advantage would result to the public treasury by their protection and settle-Thereupon the testimony of three witnesses was taken (R., 239 and 240), and their testimony referred back to the promoter fiscal. The result of this inquiry being satisfactory to the promotor fiscal, on May 26, 1821 (R., 241), he directed the publication, for thirty consecutive days, of the appraisement of said land and provided for bids thereon, with the further provision that the final disposition and sale of the land should be at Arispe, before the provincial board of the royal treasury, presided over by the governor intendent of the province. The publication was thereupon ordered by the judge surveyor, the first of said publications being as follows (R., 241):

> On said day, month, and year, I, the judge surveyor, caused Lazaro Quijada, at the sound of the drum and in clear, loud, and distinct voice, to announce: It is made public and

notorious that Don José Jesus Perez has registered the place of San Pedro, and, his petition being admitted, there were measured and located and sold four sitios of land for large stock, which were appraised and valued in the sum of one hundred and ninety dollars, in virtue of which every one who believes he has a well-founded right or desires to make a bid for the land mentioned may apply, as his bid will be admitted and his actions reserved till the day of the disposition and sale, which will be in Arispe on the day designated by the governor intendent of the province, to which end his actions and rights are reserved. And no bidder having appeared I entered it as a minute, which I signed, with those in my attendance, according to law, as I certify, and on this paper, without prejudice to the royal revenue.

Thereafter for thirty consecutive days (R., 241–248) the pregones took place, and no one appearing to outbid Pérez, the alcalde and judge surveyor, on June 26, 1821, transmitted to Antonio Cordero, the governor intendent (R., 248), "the proceedings of survey, ocular inspection, appraisements, and publications executed on the depopulated tract of San Pedro in favor of Don José Jesús Pérez for your excellency to make such order as may be just." The proceedings on June 9, 1821, were referred by the governor intendent to the promotor fiscal.

The matter seems to have remained in statu quo until June 25, 1822 (R., 249), when Francisco Pérez, the promotor fiscal of the intendency, reported favorably thereupon and recommended that the celebration of the three customary offers be proceeded with in the capital of the intendency, the city of Arispe, in solicitation of bidders for the final sale of the said surveyed land (R., 249), and thereupon, on July 3, 1822, Intendent Bustamante ordered proceedings to be had for the celebration of the three public offers and sale of the land.

Such offers were made on July 3, 4, and 5, 1822, at the city of Arispe. The land described in the first offer (R, 250) is "4 sitios of royal land for raising cattle comprised in the place called San Pedro, situate in the particular territory of the presidio of Fronteras, surveyed for Don José Jesús Pérez, of this city, and appraised in the sum of \$190 at the rate of \$60 for the first three and \$10 for the other one." The final offer of sale or almoneda was as follows:

In the city of Arispe, on the 5th day of the month of July, 1822, having assembled as a board of sale in this said capital, the intendent, as president, and the members who compose it, for the purpose of making the third and last offer of the lands to which these proceedings refer, they caused many individuals to assemble, at the sound of the drum and the voice of the public crier, in the office of this intendency and Loreto Salcido to proceed to make in their presence a publication, as he in effect did, similar in all respects to the one set out in the preceding offer, with only the difference of announcing to the public that the final sale is now to be made to the highest and best bidder. In which act appeared Don José Maria Serrano,

as attorney of Don José Jesus Perez, again offering the value of the land, and the hour for midday prayer of this day having already been struck, the public crier finally said: "Once, twice, three times gold, sold, sold; may they do good, good, good, to Don José Jesus Perez" In these terms this act was concluded, the four sitios of royal land referred to in these proceedings being solemnly sold in favor of this party in interest for the sum of one hundred and ninety dollars, and in due witness thereof this minute was entered with the president and members of this board of sales, signed with the attorney, Don José Maria Serrano.

This proceeding being satisfactory to the attorney for Perez (R., 251–252), he prays that there may be issued in favor of his client "the corresponding title of grant and confirmation of the 4 sitios which said land contains," reciting that he had been prompted to appoint in Mexico a person under pay and expenses to be charged with managing the present matter at that court.

On July 6, 1822, the intendent, Bustamente, having examined the whole proceeding, admitted José Jesus Perez to composition with the imperial treasury for said royal land, and orders that his attorney be notified and informed to proceed to pay into the treasury \$190 as the principal value at which they were sold to said party in interest the 4 sitios which said tract comprises, and certain items of cost, the amount to be paid altogether aggregating two hundred and eight dollars and one grain.

On July 7, 1822 (R., 253), the provincial board of the imperial treasury approved said sale in favor of Perez, describing the land as being "the 4 sitios of royal land for raising large stock, which the place called San Pedro comprises."

On July 8, 1822 (R., 253), the sum of two hundred and eight dollars and one grain were paid into the branch of the treasury in Arispe, in the State of Sonora, the same being apparently a branch of the national treasury. No action appears to have been taken in the matter by the superior board of the treasury, and it remained as it was until October 25, 1832 (R., 254). when Ignacio Perez, on behalf of his brother José Jesus Perez, presented to the treasurer-general of the State of Sonora a petition alleging that on July 5, 1822, there was sold in favor of his brother "the land called San Pedro, situate in the jurisdiction of Fronteras," and alleging that he had lawfully exchanged the right he had thereto with citizen Rafael Elias, and requesting that inasmuch as the corresponding title to the grant had not yet been issued, he might be pleased to order the corresponding title issued to said citizen Rafael Elias as the actual owner and proprietor of the land of San Pedro.

On October 25, 1832 (R., 254–255), the treasurergeneral transmitted to the governor of the State of Sonora the proceedings "comprehensive of the registry, survey, appraisement, publications, and sale of 4 sitios of land at the place called down the San Pedro River, in favor of Citizen José de Jesús Pérez." This proceeding also alleges that Pérez had shown by a certificate, forming a part of the proceeding, that he had paid into the national treasury the sum of two hundred and eight dollars and one grain for the principal value of the land and its corresponding taxes, and the treasurer-general reports that said Pérez desires the title of the land to be issued to Rafael Elías, complying at the same time with article 27 of law No. 30 of May 20, 1825, and said treasurer-general reports that he considers said proceedings sufficient, legal, and concluded with the formalities established by the laws and consequently in condition for the issue of the title asked for.

On October 31, 1832 (R., 255), Ignacio Bustamante, governor of Sonora, transmitted the following communication to said treasurer-general:

Having examined the proceedings on the lands which your excellency transmits with your note of the 25th ultimo, comprehensive of 4 sitios surveyed at the place called down the San Pedro River, in favor of Don José Jesús Pérez, I return it to your excellency for you to issue to Don Rafael Elías the corresponding title for the grant, in view of the exchange Don Ignacio Pérez, of this place, has made with him.

With the order just quoted the expediente closes.

The plaintiff introduced no copy of the *titulo*, the execution of which was authorized by the order of Governor Bustamante last quoted, and the only evidence on the record indicating that such *titulo* was issued, or the date of the same, is found in Exhibit 5 introduced by the Government, being a proceeding for

the denouncement of the overplus (demasias) of the ranch of San Pedro (R. 255), in which it is recited (R. 281) that "the title of grant of 4 sitios for raising large stock issued by the treasurer-general of the State in the city of Arispe under date of the 8th day of May, of the year 1833, José Maria Mendosa, in favor of the citizen Rafael Elias."

Plaintiff also introduced in evidence a copy of the titulo of the San Rafael del Valle grant, being plaintiff's Exhibit No. 27 (R. 197-203). The relevancy of this titulo as evidence is derived from the fact that the description of the San Rafael del Valle grant survey given therein as made on August 21, 1827 (R. 199), is as follows: "And running south there was measured and counted two hundred cords, the line terminating at the line of the rancho of San Pedro, granted to Don Jesus Perez; and in his name was present the administrator of said rancho with documents showing that his measurements extended to that point, the monument of which, existing at that place, being the boundary of both parties in interest." The San Rafael del Valle grant is under advisement by this court on submission at the last term as No. 229, on an appeal taken by the United States, being No. 35, present term, under the title of United States v. Camou.

George J. Roskruge, testified on behalf of the plaintiff (R., 18–24), that he had been a surveyor for twenty-seven years; that he had held a number of positions of trust in the Territory of Arizona. He testified that he had made a survey of what was known

as the San Rafael del Valle grant, that last above referred to, in May and June, 1891, and that said grant was situate in the valley of the San Pedro River; that the south boundary thereof was situated about 4 or 5 miles north of the international boundary line; that said grant lies between the Mule Mountains and the Huachuca Mountains, and that the the Mule Mountains come within 4 miles of the Mexican boundary line, and the Huachucas extend about a mile south of the line; that the north boundary of the San Rafael del Valle grant as surveyed by him is at a limy hill, a photograph of which was introduced in evidence and is to be found marked "Plaintiff's Exhibit 19," opposite page 368 of the record. Roskruge also testified that the monument used as locating the south boundary of the San Rafael del Valle grant was one on the left bank of the Bachata cañon, and about $2\frac{1}{2}$ miles east of the San Pedro River, and that as the San Rafael del Valle grant recites the San Pedro grant as its south boundary, he located this monument as the northeast corner of the San Pedro grant. It will be noted hereinafter that Contzen, the surveyor for the plaintiff, located this same point as the northeast corner, but that in view of the expediente in the San Pedro case, it is impossible that either Roskruge or Contzen could have been right in their assumption that this was the northeast corner of the San Pedro grant, and thus the south boundary of the San Rafael del Valle grant. Roskruge further testified that an east and west line through this alleged northeast corner of the San Pedro grant would be about 13½ miles south of the limy hill selected as the

north boundary of the San Rafael del Valle grant, thus making the latter grant about 131 miles in length from north to south. This witness also produced a photograph of this alleged northeast corner of the San Pedro grant and testified that the same was on the Cañada de la Bachata, and is 5 feet square at the base, and is thrown down, but can be easily seen, and was at one time a square-built monument. This photograph was not produced by the plaintiff on the trial. Roskruge further testified that the Bachata Cañada was probably 10 or 12 miles in length, rising in the Mule Mountains and emptying into the San Pedro River, and that bachata is a little plant that grows in the cañada, with some berries on it, and from that it has derived its name (R., 19), but that he could not tell whether there was much or little of this bachata there. Witness further testified that he was taken there by two Mexicans, Concepción Elias and a man named Gonzales, who lived in San Pedro, Mexico, and had lived there when they were boys, and who told him that it was the Bachata Cañada. Plaintiff failed to introduce either Concepción Elias or the other party who gave Roskruge this information as to the name of the cañada, although Elias was present in the court room during the trial (R., 22). It is to be assumed from this fact that, while Elias was willing to tell Roskruge that this cañada bore the name of Bachata, he was not willing to swear to it, and as Roskruge's only information on the subject was derived from witnesses living at the time of the trial, and one of them actually present on the trial, but neither of whom were

produced by plaintiff, it is not believed that the testimony of Roskruge on this point has any more dignity than is usually attached to other hearsay evidence. The importance of the location of the Bachata Cañada, or Cañon, will be developed later on, but it seems proper to state at this time that the only testimony fixing the northeast corner of the San Pedro grant at this place is, first, that a stone monument was found there, and second, that the Bachata Cañada was found there. When the attention of the court is called to the fact that the alleged monument at the Bachata Cañada was simply a pile of stones, with no mark and nothing whatever to distinguish it from thousands of other piles of stones all over southern Arizona (R., 36), the attempt to give any significance thereto must fall. The other basis for ascertaining this to be the northeast corner of the San Pedro grant, that said pile of stones is located on the Bachata Cañada, also loses force when it is recalled that the only testimony on behalf of claimant as to this being a canada by that name is the hearsay testimony of Roskruge, above given, the equally hearsay testimony of Contzen, to be hereinafter referred to, and the fact that Roskruge found some bachata berries in the cañada. The force of this contention of plaintiff, which is one of the principal grounds upon which it relies to establish its survey, is completely destroyed by the terms of the expediente, taken in connection with the testimony for the Government to be hereinafter referred to, which shows that the Bachata Cañada empties into the San Pedro River from the west and not from the east, and

that the cañada selected by Roskruge can not possibly be the cañada referred to in the expediente as the Bachata Cañada.

On cross-examination Roskruge testified that he also located the center monument of the San Pedro grant, the same being in the center of the San Pedro Valley and about half a mile north of the international boundary (R., 20), and that the northeast corner of the San Pedro grant was based upon the supposition that this monument selected by him was the center monument of the San Pedro grant. This monument of the San Pedro grant was photographed by Roskruge and appears in the record as plaintiff's Exhibit 20, opposite page 368. Witness reiterated in his testimony (R., 22) that the principal foundation of the San Pedro grant is the fact that he located the center monument of this grant in the United States and the San Pedro grant was mainly based upon that. Witness also testified to their being another monument about a mile and a half north of the monument taken by him as the center monument of the San Pedro grant (R., 23), and that both of these monuments, the center or initial monument, and the one about a mile and a half north of the center monument, are on the west side of the San Pedro River, and the one very nearly north of the other.

A comparison of the testimony of Roskruge as to the location of this center monument at a point about half a mile north of the international boundary with the survey made by Contzen, to be hereinafter considered, will show that the initial monument selected for the San Pedro grant by Roskruge is at least a mile from the center monument selected by Contzen, for the latter monument, according to Contzen's map, is at least a mile and a half north of the international boundary. Indeed, as will be presently noted, from the testimony of Contzen (R., 25), the latter took the monument photographed as plaintiff's Exhibits 21, 22, and 23, as his center or initial monument, whereas Roskruge (R., 23) says that such photographs are photographs of the monument located a mile and a half north of the center or initial monument. The uncertainty of plaintiff's testimony as to the proper survey of the San Pedro grant is accentuated at the very outset by the fact that the only two surveyors produced by them identify the center or initial point of this grant a mile and a half apart from each other.

Philip Contzen was the main witness on behalf of plaintiff, and testified that he had been an engineer, draftsman, and surveyor for about nine years, and was county surveyor for the county of Pima, Territory of Arizona; that he had surveyed the San Pedro land grant about three weeks previous to his testifying, and that in making the survey he had, to guide him, the description of the San Pedro land grant as disclosed in the expediente; that he was able to read and write Spanish fairly well, and that after obtaining some data he went down to the place of Palominas or Ochoaville, where one Ashton resides, who was on the grant representing his sister-in-law, who is interested therein (R., 49), and that Ashton told him about various monuments, the principal monument about $2\frac{1}{2}$ miles west of Palominas and the monument toward the Bachata

Cañada, and that after he had talked with him and had read the expediente, all the indications lead to the conclusion that the center monument was about 21 miles west of said place of Palominas. Witness thereupon identified the photographs of this alleged center monument, and, as above pointed out, this monument selected by him (R., 25) is a mile and a half or more distant from the center monument testified to by Roskruge. Witness testified that he took this center monument theory of locating the grant, first, because most of the surveys in Sonora were executed in olden times in that way, a position which is rendered intenable, as will be hereinafter pointed out by the plain recitals of the expediente that there was no center monument in this grant; second, because he could see by following a line toward the northeast he would come to the Cañada de la Bachata; to the southwest a forest of oak trees; and to the southeast a peak of the San José Mountains. It seems proper to add at this point that if the accuracy of Contzen's survey depends on the location of the Backata Cañada toward the northeast, its unreliability is demonstrated by the uncertainty of such location, even upon plaintiff's testimony, as above pointed out; and if upon a "forest of oak trees" toward the southwest, it seems sufficient to say that there is no such call in the expediente, the expediente call on this being "un monte espeso," which is properly translated, a dense thicket of brush. So far as Mr. Contzen's southwest line depends for its direction on the existence of an oak forest, it has therefore a purely imaginary basis. Contzen further testified

(R., 25) that looking to the northeast from his center monument he could see more or less the place where the Bachata Cañada is; toward the southeast he could see a peak, and toward the southwest he could see the imaginary oak forest just referred to. It may be here remarked that so far as the location of the peak is concerned there is no difference between the Government and the claimant, the peak referred to evidently being the one in connection with the San José Mountains, lying to the east from the settlement of San Witness further testified that he had the expediente with him in the field, and that in response to the initial call (which is for the erection of a corner monument and square) he assumed this to be the center monument (marked on his plat "center monument"). This versatility which enabled the surveyor to assume the corner monument to be the center monument is worthy of comment at the very outset of the consideration of his survey.

The witness then goes on to testify that he went northeast from this center monument (disregarding the call of the expediente, which is unintelligible), and at a distance of 4 miles he came to a stone monument right close to the river, that monument being about 10 feet long and about a foot high (R., 26), and that this course was toward the Bachata Cañada. A reference to the expediente, however, will show that upon this course, running toward the cañada of the Bachata (R., 236), the river was encountered at the end of 50 cords, and thus at a distance of only about a mile and

a quarter from the initial point. As Mr. Contzen, according to his testimony just quoted, however, did not encounter the river until he had gone 44 miles, a discrepancy between his survey and the expediente is developed, which can be accounted for only on the ground that his survey is incorrect. Contzen further testified that this monument accords with the call of the expediente, which is a monument on the bank of the ford at the falls, and that at this point he found said falls or rapids mentioned in the expediente. The purely imaginary character of this location is shown in the fact that there is absolutely nothing in the expediente, as hereinafter pointed out, about "falls." The word caida, translated by claimant as "falls," means bank (R., 236.) Further, Contzen, according to his testimony, went to the next monument, which he found right close to the valley near a hillock. It will be seen from his plat (plaintiff's Exhibit 28) that this monument, as well as the last one, is some distance off from his line running from said monument to the Bachata Cañada. From there he ran, according to said plat, about half a mile and found a very small pile of rocks, which he seemed to take as the end of the third call of the expediente. The discrepancy between the expediente, which makes 50 cords, or about a mile and a half, between these two monuments, and Contzen's survey, which makes only about half a mile, is noticeable. It is also to be noted that the expediente makes this call end in front of the Huachuca Mountains, which would indicate that

termination was on the west side of the such river, the Huachuca Mountains being on that side. If this monument had been located by Contzen the description in the expediente would have been in front of the Mule Mountains, which form the natural boundary to the east of the river. Contzen locates the edge of the brushy mesa, which is the termination of the next call, some distance to the south of his line (R., 28). When it is recalled that the testimony shows that all this is mesa country on both sides of the river, the fact that Contzen was able to find such a mesa with a pile of rocks on it a quarter of a mile east of his line would not seem to strengthen any inferences as to the correctness of his survey. Passing this last monument some distance to the north, Contzen came to the monument on the bank of the Bachata Cañada, which he describes to be 6 feet base and 2 feet high. The uncertainty of plaintiff's testimony establishing this as the Bachata Cañada has already been discussed, and when it is noted that outside of the Bachata Cañada as an object giving direction to this line, there is absolutely nothing to control its direction or to locate it except some miscellaneous piles of stones located off the line and at intervals and distances conflicting directly with the expediente, and also the existence of "rapids" or "falls," when the expediente has not the slightest reference to such natural object, it is not believed that the court will consider a line so run as worthy of any consideration, even if the terms of the expediente did not, as will be presently pointed out, absolutely preclude the idea that this grant was located from a center monument.

At the conclusion of this first course Contzen went back to his so-called center monument and started on a course to the slope of a peak in the San José Mountains, being a southeast course. It is difficult to see what justification the expediente affords him for going back to the center. The expediente at this point says: "From this point there were measured and counted 50 cords, the last of which terminated in the canon of the Bachata, and from there the compass was set up," etc., "for the new course." The Spanish for "from there" is de ahi, and the only rational construction of such language is that the new course was started from the point where the old course terminated. Instead of doing this, however, Contzen, when he reached the termination of his old course, goes back over that line a distance of 8 miles to find the starting point for his new course. Following this new course toward the southeast from the center, the first monument found by Contzen was a pile of stones at a distance of about 2 miles from his center monument. The expediente makes the distance about a mile and a quarter, so that the location of this monument does not agree with the expediente. The next monument he found is about a mile from the last monument (plaintiff's Exhibit 28), and is, according to Contzen's map, at least a half mile from the river. As the expediente says that this monument was put'up just after crossing the river, the discrepancy is quite apparent. Contzen found an arroyo about 2 miles farther, which he assumes has the name

of "las barras," as given in the expediente, because there is a good deal of switches there (R., 27). As the Government testimony shows that the whole country is covered with that kind of brush, the name that Mr. Contzen gave to this arroyo, to make it conform to the expediente, could as well be given to any other arroyo on that side of the river; and there is not even a pile of stones marking this as being the proper course for that line, since Contzen admits (R., 27) that he did not find any Contzen's next measurement on this course ended in a black mound, where he found a pile of stones. The expediente, however, has no such call as a black mound, the description given there (R., 236) being a thicket of dark brush. Continuing on this course, Contzen came to a descent of a picacho, or peak, where he found an old monument. His map (plaintiff's Exhibit 28) shows a number of prospect holes in this vicinity, indicating that mining operations had been carried on there, which fact may account for the never-failing pile of stones that he found in running his lines. Just at this point may be noted one of the strongest facts against the correctness of Contzen's survey, which is that the Cañada de la Bachata and the slope of the peak are placed by him on the same side of the river. If, as contended for by the Government, this was a survey by exteriors, these two objects could not possibly, under the terms of the expediente, be on the same side of the river, for the reason that in running from the Cañada de la Bachata, the end of the first course, to the slope of the peak, the end of the second course, the expediente (R., 236) says that

the line crosses the river. It requires but a glance at the map filed by claimant (plaintiff's Exhibit 28) to see that a line connecting the Cañada de la Bachata, as established by them, and the slope of the peak, the position of which is undisputed, would not go within several miles of the river at any point. Since the slope of the peak is undoubtedly on the east side of the river, the only solution of this difficulty is that the Bachata Cañada is on the west side of the river, and therefore not at all as located by plaintiff. The probable location of this Bachata Cañada, as being identical with the gulch coming out of the Huachuca Mountains and joining the San Pedro River Valley at a point some distance below the international boundary, will be hereinafter pointed out in connection with defendant's Exhibits 8, 9, and 10 (R., 326).

Having reached the end of his second course at the slope of the peak, Mr. Contzen ignores the terms of the expediente (which says that at said peak the original surveyor placed "a general rectangular corner," and that on the next day, "being at the general rectangular corner," he started the new course, etc.), and goes back to his center point to start the new course instead of starting it from the slope of the peak, as plainly specified in the expediente. Measuring along this course from the center, at a distance of a mile and one-third, Contzen found a small monument in an oak forest, and this, he says, practically corresponds to the description given in the expediente. In view of the fact that the expediente says nothing

about "an oak forest," but uses the the words un monde espeso, which means a dense thicket of brush (R., 237). and that Contzen (R., 29) says that this oak forest was not a very dense one, it will be seen that the assumption upon which the surveyor proceeded in adopting this so-called "oak forest" as controlling his line is entirely without foundation in the expediente. Going about 2 miles farther, Contzen encountered an arroyo which he says had all the evidences of the Arroyo del Malpais, the natural object named in the expediente, It will be noted that he does not testify that this arroyo bears that name, and apparently gives it that name only because it is very rocky, a characteristic of all the other arrovos in that vicinity. This arrovo which he selected as fitting the expediente is, it is to be noted, at a distance of 2 miles from the last monument. when the expediente call makes it only a mile and a quarter. Continuing his survey and running about a mile and a half farther, Contzen came to the slope of a red table-land, but failed to find any monument, and he terminated this course by running about a half mile farther and stopping at a small pile of stones about 4 feet at the base and a half foot high. It will be noted that the distance between these last two monuments is less than half a mile, whereas the expediente makes it 50 cords, or about a mile and a quarter. At the end of this line Contzen goes back again to his center point and runs a line to the northwest, terminating at an old stone monument measuring 10 feet at the base and a foot high (plaintiff's exhibit 28). This feature of his survey especially illustrates its entirely visionary character. At the conclusion of the third course the surveyor says that he placed a general boundary and dividing rectangular corner (esquina) and "from it" (desde ella) he measured the pext course. The language used, and particularly the gender of the Spanish ella, shows beyond question that the fourth course was run from the esquina corner or monument, that word in Spanish being feminine and the pronoun, which is ella, referring to it. Contzen, however, goes back to the center (centro), which is masculine, and runs northwest to a pile of stones, although the expediente (R., 237) plainly shows that this course was not run at all and that no monument was placed at the end of it, the words of the survey being "from it there were assumed to be inclosed and measured 250 cords, which make 24 leagues." On claimant's theory of the survey such a description is absolutely senseless, since it leaves the northwest corner of the grant entirely unprovided for. On the Government theory, however, of a survey by exterior boundaries, this makes an entirely complete survey, since, in running by exteriors from the fourth corner back to the starting point, there was, of course, no necessity to provide a monument at the end of that course, since it came back to the initial monument. Contzen admits (R., 41) that the last course of 250 cords "was measured to no monument," that he could conceive of no reason under his theory of the survey why they did not put up a monument at the end of it, but that on the theory of a survey by exterior lines, there would be no necessity for such a monument. He further testified (R., 27) that the center and initial monument taken by him was one measuring 16 feet at the base and three feet high, and was a pile of stones of considerable prominence. It may be here noted that it is exceedingly peculiar that the center monument, forming so important a part of the description of the survey, is nowhere mentioned in the expediente. Contzen testifies (R., 30) that there are ruins of old adobe houses at Palominas and that the number of acres included in the survey of the San Pedro grant, in the United States, was 38,622.6 acres, and in Sonora 17,509.7 acres.

On cross-examination Contzen testified that he was down on this grant twice, the first time four days and the second ten days; that he had never lived in the San Pedro country, and that his purpose in going down was to make the survey under employment, and that he ran the lines as they were shown him (R., 32); also, that he did not pretend to have any special technical knowledge of the Spanish in these grant documents, and that the translation he had with him on this survey was that tendered in evidence by plaintiff, the incorrectness of which, in many essential respects, has been already in part pointed out. He admitted that the expediente could be construed in two ways, either as a survey from a center or by exterior lines, but that in making the survey he was controlled by the fact that the expediente says that the grant was "centered and headed." On being asked to indicate the word

which says that the grant was centered, he pointed out the word *sentruados*, but admitted that he had never looked in a dictionary with a view to determining its meaning, but that he would not take it to be the same word used in the beginning of the petition for this grant (R., 231). On further cross-examination he was asked as follows (R., 33):

> Q. And if there was nothing in this expediente from beginning to end outside of this to show any center was intended, you would still feel that it means centered, would you?

A. No, sir.

Q. What else is there in the expediente, then, that shows there was a center to this?

A. There is nothing to show whatever,

Q. The only thing that has guided you is the topography outside of this, then, and outside of this one word there is nothing in the expediente to show that there was a tract laid off from the center?

A. No, sir.

Witness further admitted (R. 34) that where these Spanish grants were laid off from a center they were generally laid off to the cardinal points, but that he did not know of any instances where these Spanish grants were laid off without any center. For an instance, however, of such a grant the attention of the court is called to the terms of the Nogales grant (Ainsa v. United States, 162 U. S., 208).

The surveyor further testified as follows (R., 34):

Q. Did you ever go over the Spanish with a view of determining from the Spanish as used just what was meant as to there being a center or what was meant?

A. It appears it was surveyed from an exterior point.

Witness further testified that he would take such exterior starting point to be close to the river somewhere, but that he could not locate such on his map, and did not, as a matter of fact, locate it. He further testified (R., 34):

Q. The expediente says you are to start from a point on the exterior?

A. Yes, sir; it appears that way.

He further testified (R., 35) that this tract surveyed by exteriors of 200 cords to the side would make 4 sitios in the square, the amount granted, but that running said measurement of 200 cords northeast, southeast, northwest and southwest and connecting the termination of said lines, the theory adopted by him would make a grant of about 8 sitios, thus establishing that the Government theory of the method of the survey of this grant conformed to the quantity granted; whereas the plaintiff's theory doubles that quantity. Witness further admitted that his survey did not include the ranch of San Pedro, but left it 5 miles to the south (R., 35), and that he did not go down to San Pedro at all, but confined his investigation to the country north of the international line. He also testified (R., 37) that he did not know why the monuments mentioned in the expediente as being called cross monuments were so called (R., 43), and why the corner monuments named

in the expediente were so called. The testimony of Mr. Flipper, on behalf of the Government (R., 54), which will be presently considered, shows that the words "cross monuments" and "corner monuments," as used in the expediente, have a clear and distinct meaning on the theory of a survey by exterior lines, but have no such significance if this be conceded to be a survey from center. This is illustrated on defendant's Exhibit 10 (R., 326), when examined in connection with Mr. Flipper's testimony. Contzen further admits (R., 37) that the Spanish words used at the end of each course mean from the monument at the end of each course, and not from a center; and he admits that he did not go down below the international boundary with a view of attempting to fit the calls of the expediente to the natural objects in that portion of the country. Upon his attention being called to the monument at his northeast corner, which is described in the expediente as being a general boundary and dividing rectangular corner (R., 236), he admitted that there was no line converging at that monument with another line and making a right angle there.

Being further questioned, Contzen testified as follows (R., 38-39):

Q. After he does that, what is the Spanish as to what he does? And in the figure of a true square, 200 cords, which make 2½ leagues, what is the Spanish from there?

A. Desde ahi.

Q. And what does that from there mean?

A. It means from that monument.

Q. In other words, it means from the monument at the Bachata cañon.

A. Yes, sir.

In view of the fact that in making his survey Contzen did not run the second line from the monument at the Bachata cañon, but ran it from the center monument, it would seem that there was a great discrepancy between his theory as to the meaning of the expediente and his practice in putting that expediente into effect by his survey. This is further shown by his testimony (R., 39), where he says that the definition he gives of the word sentrandos, as meaning centered, conflicts with what he has just stated as to the second course starting, under the terms of the expediente, from the monument at the Cañada de la Bachata.

Contzen also testified (R., 41):

Q. Now, where he says after he ran from the center monument down here to the southwest corner, he says from there he took the course from the southwest to the northwest; what is the Spanish of "and from it"?

A. I' desde ella.

Q. What is the gender of the Spanish ella?

A. It refers to a female; it is feminine.

Q. What do you think it refers to there, from it?

A. It means from that monument.

Q. The last monument established which was down here?

A. Yes, sir.

Q. Did you run the next line from it; did you do that?

- A. I did not; every time I returned to the center monument.
- Q. There is nothing to indicate that you should return to the center!

A. No, sir.

Upon the question of the last course run by Contzen, being that to the northwest, and the direction of which is controlled solely by the old stone monument indicated on Contzen's map (plaintiff's exhibit 28), the following extract from the testimony of Contzen is instructive (R., 41):

- Q. This last course of 250 cords was measured to no monument?
 - A. No, sir.
- Q. Can you conceive any reason why they did not put up a monument at the end of that?
 - A. I can not.
- Q. Suppose you describe a perimeter of a tract of land measuring such a distance and such a direction and come back to the starting point, would there be any necessity for it?
 - A. No, sir.
- Q. You would have a boundary which is there already when you come back!
 - A. Yes, sir.

On cross-examination Contzen testified (R, 42) that he could not take the calls of the expediente and lay off a square piece of land because he could not make it fit.

It may be here again recalled that Contzen (R., 40) distinctly stated that he did not go down to San Pedro, or indeed into Mexico, with a view of finding the objects named in the expediente, thus ignoring the very

place at which it would be possible to locate this grant by finding the natural objects named therein.

On redirect examination Contzen further testified as follows:

- Q. Now, regarding the meaning of these different words desde ella, will you examine the expediente and see whether or not the same word is used constantly in that expediente?
 - A. It differs.
- Q. Does not the word desde mean from there?
 - A. Yes, sir.
 - Q. And generally it means from the place?
- A. Yes, sir; it means from there; from the place
- Q There is nothing in the expediente that it means from a certain monument—to indicate that it means from a monument, is there?
- No, sir; but I should infer that it means from the monument.
- Q. However, you drew that inference simply from the context?
 - A. Yes, sir.

Witness further testified (R., 43) that no one selected the center for him, but that he selected it because he adopted the center monument theory, and, taking the topographical features into consideration, that that was the only one he could adopt. It is to be again noted that the only topographical features examined by Contzen were those north of the line, and on his recrossexamination this is still further developed (R., 45), where he reiterates that he did not examine the topographical features around San Pedro and did not go to the place called Las Nutrias, which, it will be recalled, is described in the expediente as being close to the tract petitioned for and granted.

Witness Horace H. Cobb, examined on behalf of plaintiff, testified that he was a resident of Fort Worth, Tex., in the land and mortgage business, and had gone out on the land in question with Mr. Contzen at the time of his survey; that they found the center monument, which was a very large, very well built monument, and apparently very old, and went around the several calls of the expediente and located them. It does not seem necessary to review the testimony of this witness in detail, as it is simply a repetition, to a large extent, of the testimony of Contzen as to observations on the premises, carrying with it the same erroneous assumptions as to the method of making the survey, the existence of rapids or falls, when none are mentioned in the expediente, and similar errors which have been heretofore noted. Mr. Cobb's testimony is perhaps a little more positive than Mr. Contzen's on many points, due in all probability to a more imperfect knowledge of the facts. This is illustrated by his testimony (R., 47), in which, describing the pile of stones shown on Contzen's map (plaintiff's Exhibit 28), about a mile southwest of the alleged Bachata Cañada, he speaks of such monument as "possessing unmistakable signs of being a landmark." It is not believed that anyone possessed of any familiarity with southern Arizona and the abundance of piles of stones found all over that country, would be willing to swear that a given piles of stones, very old and fallen down, possesses

"unmistakable signs of being a landmark," simply because old and fallen down, especially when such pile of stones is located as was this one-a quarter of a mile from the line. The witness testified that the Cañada de la Bachata, as identified by them, was a large cañada, and also that the corners selected by them were the only ones that would answer the calls of the expediente. As Cobb, like Contzen, failed to go into Mexico, in the vicinity of San Pedro for the purpose of locating this grant, his inability to locate it, except by the corners he identified, does not possess even the slight weight attached to negative evidence. On page 49 of the record Cobb described with considerable vividness, "the rapids in the river" and the geological formation which admits of there being rapids at this point of the river. This portion of the testimony of the witness would be enlightening were it not rendered ludicrous by the fact already pointed out, that there is absolutely nothing in the expediente about rapids in the river. It is to be regretted, perhaps, that the terms of the expediente eliminate from the landscape something so beautifying as water falls and when properly translated substitute in their place something so prosaic as the river bank.

Mr. Cobb further testified that the center monument chosen by them was conical in form; also that in his examination of this grant he was convinced by these monuments and the calls of the expediente that they had properly located it. Upon the subject of monuments he was asked as to whether he had ever been informed of the existence of miner's monuments and Indian monuments all over that section of the country, but disclaimed any knowledge thereof.

In addition to the testimony of the foregoing witnesses, plaintiff proved the death of H. G. Howe and attempted to offer in evidence, as plaintiff's exhibit 24, two reports made by him to plaintiff's attorney of the survey of this grant (plaintiff's exhibits 24 and 26, R., 174-177). This testimony was received subject to the objection of the Government that it was inadmissible, being a mere private report made to parties in interest and without opportunity of cross-examination (R., 52). These reports by Howe are so clearly inadmissible that they will not be discussed beyond calling the court's attention to the fact (R., 176, 177) that Mr. Howe also found "rapids" in the expediente, when none existed, that these nonexistent rapids were a controlling feature of his survey (R., 178), and that the best he could say of the northeast corner was that he went to the monument on the south side of the wash "supposed to be the Bachata Cañada." Mr. Howe also says (R., 178) in his report: "It has been claimed by some that this grant laid entirely south of the international line. This is an impossibility, for what was known as the San Pedro custom-house claimed to be the San Pedro grant; there is no river and no Huachuca Mountains to stand in front of." It is difficult to see how the absence of a river could operate against the theory that the grant was entirely in Mexico, the San Pedro River extending for miles south of the international line, and so far as the comment that there are no Huachuca Mountains

south of the international line for the monument named in the first course of the expediente to stand "in front of" is concerned, it seems sufficient to refer the court back to the fact (R., 18) that the Huachucas run a mile south of the line, according to Roskruge, and according to Contzen (R., 44) monuments could be located south of the international line and still be in front of the Huachuca Mountains.

On behalf of the Government Special Agents W. M. Tipton and H. O. Flipper, who made personal examination of the country here involved, were examined, as also was Gavino Ariega, a Mexican living in that vicinity, and Thomas A. Borton, who, as hereinbefore noted, made an examination of this grant on behalf of the surveyor-general's office.

Mr. Flipper testified (R., 54) that he has been a practicing engineer since 1877, and had been engaged in the survey of public lands in the Republic of Mexico from 1882 to 1893, having made surveys in nineteen of the twenty counties of the State of Chilmahua and in all but four counties of the State of Sonora; that he had examined expedientes and records at Guaymas, Hermosillo, and Chihuahua, and that he understood Spanish—reading, writing, and speaking it. He testified that his first acquaintance with the San Pedro grant was in 1886, and that subsequently he had examined the expediente at Hermosillo and also at Guaymas, and had secured from the latter place a copy of the expediente of denouncement of the demasias of the grant of San Pedro offered in evidence as defendant's Exhibit 5 (R., 255). He testified that he visited the

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tract of San Pedro again in April, 1899, and that between 1886 and the present time he had had occasion to visit there frequently, it being only 60 miles east of Nogales, where witness lives; that his visit to the San Pedro grant last April was for the purpose of making an investigation of the grant, and that on such visit he became acquainted with the ranch of San Pedro (R., 56), and that this settlement is the only place on the San Pedro River that has that name. Witness also testified that he was acquainted with the location of Las Nutrias, and that the ruins of said settlement is south and west of the ranch of San Pedro. Witness then gave in detail (R., 56, 57) the result of his observation as to the location of this grant based upon his visit to the country, having the expediente with him and examining in detail the natural objects named therein. Without repeating in detail all that is stated by Mr. Flipper, the following points in his testimony will appear particularly pertinent to the issues in this case:

After calling attention to the fact that the courses named in the expediente are all impossible, he gives his interpretation of the expediente, which is substantially that disclosed by the Government translation found on record, page 235, and heretofore discussed. From Mr. Flipper's interpretation the grant survey started from a point above the old house of San Pedro and the lines were run around the exteriors thereof, finally returning to and closing upon the initial monument. Mr. Flipper explained the meaning of the words "cross monument" and "corner monument" as,

used in the expediente, and it will be noted from his testimony in connection with the plat used therewith. and introduced as defendant's exhibit 10 (R., 326), that these words lose their significance entirely upon the theory of a center survey, but upon the exterior-survey theory they have a relevancy and a significance that is readily apparent to anyone who is familiar with the Mexican system of surveys. Mr. Flipper (R., 58) also testified that, so far from there being anything to support the theory of the existence of a center monument, there is not a single word in the expediente that sustains that theory; that the word sentruados, which apparently has misled the plaintiff in the matter, does not mean centered, as contended for by them, but means "area determined" (R., 237). Mr. Flipper then gives in detail the features of the expediente, which show that this grant could not have been surveyed from a center point (R., 58); that the starting point is designated in the expediente as a rectangular corner and general outside corner, which would be absolutely inappropriate to a center initial point; that from this point the surveyor completed his side line, which last expression in the expediente shows clearly that it was not surveyed from a center. Mr. Flipper points out in connection with the map, defendant's exhibit 10 (R., 326), that when the surveyor arrived at the point B, which is the end of his first course, the translation shows that he ran his next course from point B, and not by going back to the center; and that when he reached point C, the Spanish clearly indicates that he ran his next course from that point to D, and not by going back to the center, and that from point D to starting point no measurement was made at all, but the surveyor simply closed his figure by going back to the initial monument. He also points out the fact that the original survey was evidently to start from a certain cienega, which was near the junction of the Arroyo de Las Nutrias with the San Pedro River, and up the San Pedro River, from the San Pedro house, about at the place marked "N" on said defendant's exhibit 10. Witness testified that about 2 miles above the ranch at San Pedro, being to the south thereof, there is such a ciencga as is described in the expediente (R., 62); that such a cienega was there when witness was there in 1886, and that there are no other ciencgas along the road between this cienega and the international line, and that the old place of Las Nutrias is also in this vicinity and about 2 or 3 miles from San Pedro. Thus, by the testimony of Mr. Flipper, the place of Las Nutrias, and the cienega, both of them vital calls in the expediente, are shown to be some miles south of the survey as made by plaintiff, which fact shows that said survey is absolutely incorrect. Mr. Flipper thereupon (R., 60-61) takes the calls of the expediente in detail and shows that by starting at a point in the vicinity of "A" on his map, defendant's Exhibit 10, it would be possible to lay off this grant so as to give due regard to these recitals as to its initial point, and at the same time to go to the various natural objects named in the

expediente as those to which the original surveyor went. In the course of his testimony (R., 61) he calls attention to the fact that there is nothing whatsoever about rapids, the Spanish word caida used there meaning the descent of the slope of the river bank. He testified (R., 62) that at the end of the distance indicated on the first course, ran approximately as indicated on defendant's Exhibit 10, there is a cañon or cañada at the end of Huachuca Mountains emptying into the San Pedro River, being a very broad cañada some 8 or 10 miles in length, and having an old monument at the place marked "B." Witness further testified that upon coming up this canada for some 6 or 7 miles he found therein the bush named bachata. Witness then calls attention to the fact already referred to that in going from the Bachata Cañon to the slope of the peak named in the expediente it is necessary under the terms of the expediente to cross the river, and he describes the natural condition existing on such a course and shows (R., 63) that there are located along such a line all of the natural conditions, which would comply with the terms of the expediente, among them mesas, thickets of dark brush, and finally the slope of the peak. Continuing, witness describes the conditions existing on the third course and shows that a line as indicated by C-D on defendant's Exhibit 10 would encounter natural objects such as are described in the expediente, including mal pais, mesas, and also red table-land (R., 64). Referring to defendant's Exhibit No. 4, which is a proceeding in

1886 under the Mexican Government, to segregate the legal area of this grant from the demasias or excess, and which will be hereinafter considered, Mr. Flipper testified that he found the old monument which constitutes the south center of the survey of the cabida legal, made under the authority of the Mexican Government and shown on the map opposite (R., 368), and being the same as the point X indicated on this defendant's Exhibit 10. Mr. Flipper thereupon gave the result of measurements from this old monument at X to the old house of San Pedro, showing the monument to be about a mile and eight-tenths south of the said house and to be 8.86 miles south of the monument No 98 on the international boundary and 5.82 miles south of the Bachata Cañon, as contended for by the Government. These measurements are shown on defendant's Exhibit No. 7 (R., 336), as is also the old monument of the Bachata Cañon on the west side of the San Pedro River.

The Government also offered in evidence defendant's Exhibit No. 8, opposite record page 326, being a map showing the original location of the San Pedro grant, and in connection with Mr. Flipper's testimony (R., 56), showing the location of the place of Terrenate, which it will be recalled was the home of Antunes, mentioned in the expediente; and also the location of the cienega or marsh; the ranch house of San Pedro, and the cañada in which bachata was found. It was also pointed out by Mr. Flipper that the place of San Pedro is a ranch house at which the Eliases, the descendants of the original holder

of this grant, have resided for many years and now re-If the San Pedro grant is located as contended for by plaintiff in this case it leaves far to the south the ancestral settlement in which the grantees and their successors have here held their principal possession, Mr. Flipper also calls attention to the fact (R., 67) that the piles of stones, which have been so frequently referred to, exist all over that section of country and over the entire north end of Sonora, and that the Indian tradition as to these piles of stones is, that they were places that marked roads and trails, and to some of them a certain mystery was attached. On cross-examination (R., 69) Mr. Flipper points out that the words in the Spanish of the expediente distinguish the corners indicated by letters A, B, C, and D on defendant's Exhibit 10, from interior corners such as M and E; those first named being rectangular corner monuments and the others being simply monuments and the former meaning corners at which lines meet at right angles, a definition which is absolutely inconsistent with any idea other than that of a survey of the grant by exteriors, Mr. Flipper (R., 72) disclaims for his map (defendant's Exhibit 10) any pretension that it represents the grant as actually located originally, but that such lines simply represent how the grant might be located so as to conform to the expediente, both as to initial point and as to including the place of San Pedro, and as to going to natural objects which would fit the expediente more closely than those located by the plaintiff (R., 76-78).

Gavino Ariaga testified (R., 79) that he was 60 years of age; lives at Santa Cruz and had known the San

Pedro country and settlement all his life, and had been there first when he was 15 or 16 years old, and that San Pedro then was where the ranch is now and at the place where José Maria Elias and Manuel Elias now reside, and that there is on the San Pedro River no other place of San Pedro or old house of San Pedro; and that there were, when he first knew the country, no houses or ruins of houses at Palominas or Ochoaville, or at any other point on the San Pedro River, except at said old ranch of San Pedro, and that he had never heard of any canon on that river called the Bachata Cañon. On cross-examination witness testified (R., 84) that he had been out to this country perhaps as many as fifty times, and (R., 89) that the only cienega he knew along the valley was near Las Nutrias, and that he knew of no cienega up the river from Palominas.

Thomas A. Borton testified on behalf of the Government that he was a practicing attorney at Tucson and that in June, 1887, under written instructions from the surveyor-general, he had made an examination of this grant, being five days at the ranch of the company owning the grant; that in response to inquiries the only monument that was shown him by the parties at interest there, who were the predecessors in interest of the present plaintiff, was a large one about 2½ miles a little south of west of the ranch house, which said parties at interest "thought was one of the monuments of the grant" (R. 91); that he visited the slope of the peak referred to in the title papers and found no monument there, but found the post of the survey of the San Rafael

del Valle grant (evidently placed there by the surveyor who made the provisional survey of that grant for the surveyor-general of Arizona). Witness testified that the parties took him across the river in a northeasterly direction and pointed out a few stones on the sand which "they thought might be one of the monuments of the grant" (R., 92), and said parties admitted that they themselves did not know of any other monuments at that time." Witness further testified as follows (R., 92:)

Q. Was there any other natural objects besides this peak that they were able to show you?

A. This cañon Bachata, they did not know where it was at that time.

Q. As the result of your investigation for these four or five days, together with the expediente, what conclusion did you come to as to whether or not this grant was within the United States?

A. I came to the conclusion, and I think so stated in my report to the surveyor-general, that it could not be located within the United States, that is, that the tract described in the title papers that I had, according to the calls and otherwise, could not be located within the United States.

Q. Did the calls of the expediente fit this Bachata Cañon, or at least this place that you subsequently claimed was the Bachata Cañon?

A. It was named in the expediente, but nobody down there knew anything about it, and I did not know where it was then.

Witness further testified that he then went down to locate the grant in Mexico and called upon Don Manuel Elias to find out what he knew about this grant, and was informed by Mr. Elias who, it will be recalled, is one of the owners of this grant, on the Mexican side, that he had heard from his father and their fathers that they had owned the land where he was living, and that they called it San Pedro, and that there was pointed out to witness the cienega, which is located between a mile and a mile and a half in a southwesterly direction from the little settlement of San Pedro (R., 93).

On cross-examination witness stated that he had made a report of this examination, which was thereupon presented in evidence as plaintiff's Exhibit No. 27 (R., 193). Said report agrees entirely with the testimony of Mr. Barton, and it will be noted therefrom (R., 196) that he therein states that the field notes of the survey of the San Pedro grant would fit "at most any point along the San Pedro River for a distance of 25 miles," and probably more, as witness explained on the trial (R., 92), by leaving out the cienega. Witness on cross-examination further testified as follows (R., 94):

Q. Do you know where the Canada Bachata in Sonora is?

A. I think I know where it is. The Cañada Bachata is a small cañon running southeasterly from the Huachuca Mountains.

Q. When did you get that information?

A. About three weeks or a month after I made that report.

William M. Tipton testified on behalf of the Government that he was special agent for the Court of Private Land Claims (R., 97), and plaintiff's attorney admitted Mr. Tipton's qualifications as a surveyor and a Spanish scholar. Mr. Tipton testified that he had examined that portion of the expediente pertaining to the survey of the grant, and had not been able to find in the expediente anything to indicate to his mind that the grant was surveyed from a center point, but had found in the expediente that it was surveyed in a different way (R., 98). He explained that his conclusion that the grant was surveyed by exterior lines was based, first, upon the fact that there is no statement in the expediente that the survey was made from a center point, and, second, that the description of the grant given in the expediente shows that the form given to the survey was substantially that of a rectangular figure. He called attention to the fact that in the description the first corner that the surveyor established, which was at the end of his first course, Spanish words are used that mean that the monument he established was a monument to mark a point at which two lines were to meet each other at right angles, and that at the termination of his next course he established another monument to mark a right-angle corner, and at the conclusion of his third course he established another right-angle corner, and thus considered the survey as concluded and measured, without actually running his line from the last corner to the initial point. He called attention to the fact

that at the end of each one of the lines or courses the surveyor describes that he starts from the end of that line to run his next course, and there is no intimation that he returned to the center point to begin another course, but that the statement of the expediente is altogether to the contrary. (R., 99.) He calls attention to the fact thatt he words "this side inclosing, and in the figure of a true square" as used in the expediente, has a meaning, if the survey be considered one by exteriors, but is entirely without meaning if it be construed to mean that the surveyor went back to a center point to run each course. Mr. Tipton also calls attention (R., 99) to the Spanish words "y desde ella," used at the end of the third course, and which can have no other reference than to the word "mojonera," which is the monument at the conclusion of that course. He also calls attention to the Spanish word "careseados" (R., 100, 104, 105), which means that the side lines of the tract were run and could not apply to a survey such as Contzen's, for the reason that no side lines were run in that survey. Attention is also called by the witness (R., 100) to the fact that the word "caida," which plaintiff has consistently considered as meaning rapids, does not mean that, but means the "descent." He further testified that he was with Mr. Flipper on his examination of this tract and was with him the identification of the monuments on the survey made by Molera in 1886 to ascertain the demasias of this tract (defendant's exhibit 5, R., 255, and maps attached); that he had seen the old house of

San Pedro, with its old round tower and with dimensions a hundred feet long and more than that in width. said house being located as testified to by Mr. Flipper; that he had seen the cañada entering the San Pedro Valley from the west side thereof and originating in the southern portion of the Huachuca Mountains, and that said cañada was the largest one that he saw on the west side of the river in that vicinity, and that there was an old monument near it. He also testified as to the existence of malpais rock on the east side of the river, the whole plain being covered with it, and that there was very little of it on the west side of the river. The relevancy of this testimony will be seen when it is recalled that the plaintiff places the Arroyo del Malpais on the west side of the river, where there is very little or no malpais rock, and the Government theory is that it is located on the east side of the river, where Mr. Tipton testifies, as just stated, that the whole plain for miles is covered with it. Mr. Tipton also testified as to the great abundance of monte or brush existing on the east side of the river, where the boundary call for such vegetation is located under the Government's theory. On cross-examination plaintiff's counsel adduced the following testimony from Mr. Tipton (R. 103-104):

Q. Could not the language used in that expediente be translated that he commenced at the center of the grant?

A. In my opinion it could not.

Q. Is it not possible that it could be so from the construction of the language? A. I do not think so.

Q. I call your attention to the fact that at the end of the first call a square monument was placed there, does it not?

A. That is not all it states, though.

Q. What else does it state?

A. The language here states substantially that the corner established at that place was a right angle; that is what these words mean, mojonera, esquina quadrada.

Q. Would not that central point be the point at which these lines would form right angles?

A. I do not think it would.

Q. If that grant was correctly surveyed on the theory on which it has been surveyed, these lines would meet at right angles?

A. That is wholly imaginary.

Q. You say there must be a corner monument where the lines meet at right angles. If this land grant was correctly surveyed originally in the manner that it has been surveyed upon this map, would not these lines meet in right angles, as called for in that expediente?

A. No, sir.

Q. Your theory is that the third course commences or begins at the end of the second course, instead of commencing at the center monument?

A. Yes, sir; that is my theory.

Q. If you could find absolutely every call in the expediente on the lines as laid out by Mr. Contzen you still would not say that it could not be possible that the original survey was not made from the center?

A. I have already made one answer that it would not be correct.

Q. You simply say the language, technically considered, réquires the survey to be made around the grant?

A. Yes, sir.

In addition to the oral evidence thus presented by the Government there was introduced as defendant's Exhibit 1 (R., 205) the petition of the Eliases, predecessors in title of the claimant, presented to the surveyorgeneral, together with the map attached to such petition. This petition is interesting as showing that at this early date the claimants alleged a grant comprising only 4 square leagues, and the fact that time has obliterated the monuments and there only remained the old ruins at Ochoaville, the description of the expediente, the fact of the joint boundary of the San Rafael del Valle grant with the San Pedro grant, and the distance run as the sides of the grant as the data upon which its location could be made. The very complete system of monuments described by Contzen and the exactness with which he was able to locate this grant by natural objects hardly accords with these allegations, that time had obliterated all the monuments of the grant, and it will be interesting also to compare the sketch map filed by claimants with said petition (R., 206) with the survey of this grant originating from Howe and Contzen

The Government also presented in evidence Exhibit 5 (R., 255), a most interesting document found in the

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archives of Mexico at Guaymas, being the expediente of the proceedings of denouncement of the demasias of the ranch of San Pedro initiated on July 8, 1880, by the Elias family, the predecessors in title of the plaintiff in this cause. This proceeding is most instructive, not only as bearing upon the issues in this cause, but also as showing the attitude of the Mexican Government toward the land over and above the exact area paid for and included within these ancient surveys. Without attempting to give this proceeding in detail, it seems proper at least to outline its purport as revealed from the record (pages 255–258).

On July 8, 1880, Manuel Elias made a formal denouncement "of the overplus (demasias) that may be in the ranch of San Pedro in the jurisdiction of the town of Santa Cruz, in the district of Magdalena," of which ranch he alleged that he was a coowner. After considerable difficulty with the authorities, arising from the fact that the proceedings were not carried forward with sufficient promptness, and after securing by appeal a declaration of his right to proceed to such denouncement (R., 262), Elias, on June 1, 1882 (R., 263), secured the appointment of one Pedro B. Molera, who was directed by the authorities to "proceed to the survey of the ranch of San Pedro, after examination of its title and citation of the adjoining owners, marking on the ground as well as on the respective maps the lawful area (cabida legal) of said ranch and the overplus (demasias) it may contain within its monuments, subjecting his operations to the general laws of July 22 and August

2, 1863," and warning the party that if said proceedings were not presented within ninety days from the notification of the survey the denouncement shall be declared void.

On July 15, 1882, Molera accepted the appointment (R., 265), and on July 19, 1882 (R., 266), he appeared at the ranch of San Pedro. The proceedings of Mr. Molera on said day (R., 266) recite that he found it necessary before proceeding with the survey to make a reconnoissance of the land because the titles are decidedly obscure, and says that notwithstanding the person who made the ancient survey gives the distances, the courses are incomprehensible, and no description is given of the places said title cites. This observation of Mr. Molera, upon the very title papers now under consideration, is most pertinent, as is also his record of the proceedings of July 21, 1882 (R., 266-267), in which he states that, accompanied by the parties in interest, they left the house of the ranch (i. e., the old house of San Pedro) in a direction to the south and traveled about half a league to where they found two monuments of piled-up stones on the summit of some low hillocks (lomas) to the east of the river and valley of San Pedro, which river runs from south to north, said monument being in front of where the valley (bajio) of Las Nutrias debouches. Mr. Molera then states that on account of the distance and what the title papers say he believes it must be in the vicinity where they began the ancient survey. It may be here recalled to the attention of the court that this point, which appears on the plats to said Exhibit 5 (R., 368), is the precise point contended for by the Government in this cause as the initial point of the survey, and is not less than 10 miles south of the initial point taken by Contzen. Mr. Molera also (R., 266) infers from the title, which cites the slope of the peak, that it was the San José Mountain which might determine it, because it is the most noticeable point and the only peak in that direction, a position which accords entirely with the Government's position in this cause.

Having satisfied himself from the reconnoissance as to the general lines upon which this grant should be located, Mr. Molera (R., 267) proceeded to lay off the cabida total, or the entire area within the exterior monuments of the grant so far as he could ascertain them. The result of his efforts is shown by the second map attached to Government's Exhibit 5, opposite record page 268. After laying off a total area of 28,265.11 hectares, running up to the international line on the north, Mr. Molera, on July 28, 1882 (R., 267), proceeded to segregate the lawful area (cabida legal), which was 4 square leagues, and in laying off this quantity selected as his starting point an old monument distant 2,550 meters south, 4 degrees east from the old San Pedro ranch house, his initial point being that indentified to by Mr Tipton and Mr. Flipper and appearing on defendant's Exhibit No. 10, page 326 of the record, as point X. The method by which this cabida legal was laid off appears from said map No. 2, opposite page 368, and also by the field notes on page 368, from which it appears that the legal area or cabida legal was 7,061.61 hectares, which deducted from the

total area of 28,265.11 hectares, left an overplus or demasias of 21,203.47 hectares, which remained to be paid for by the denouncer. Orders were thereupon given for the advertisement of these proceedings and testimony was taken (R., 271-277) as to the qualification of Mr. Elias to secure this property. On April 8. 1884 (R., 282), the district judge of Guaymas, reciting that it appears that the ranch of San Pedro belongs to various owners, who, under the law, have equal rights to the overplus (demasias), ordered that Manuel Elias be notified to state whether or not he consents that said overplus (demasias) shall be adjudged to him in company with the other owners, and if not that these latter may avail themselves of their right to state whether they waive the right they have in the denouncement of said overplus. Thereupon it was consented that the demasias should be adjudicated to all of the owners. On November 18, 1884, the value of the demasias was fixed at \$1,272.26 (R., 284), and it will be noted that no price was fixed for the cabida legal, since that portion of the survey belonged to the parties under the original title. This is shown by the order of June 22, 1886 (R., 287), in which the district judge recites that, "having examined the proceedings of survey and the map, both made by the surveyor, Pedro B. Molera, from which it appears there is a total area of 28,265.11 hectares, of which 7,061.64 hectares are covered by title and 21,203.47 hectares are overplus (demasias)," and having examined the other proceedings, he decrees the adjudication of said overplus to José María Manuel and the heirs of José

Juan Elías in third parts, but subject to the approval of the department of public works (R., 288). proceedings were transmitted to the department of public works at Mexico on February 9, 1887 (R., 291). An error having been found in the calculations, the proceedings were returned, with orders to the surveyor to repeat the survey and to correct the error therein. The careful scrutiny of these proceedings by the Mexican Government is shown by the fact that the error herein alleged is that the grantees had been given as their cabida legal 39 ares, 20 centiares, "more than they are legally entitled to under said title to the prejudice and loss of said extension to the public treasury." These proceedings coming back to the district judge at Guaymas, Mr. Molera again went into the field, and on March 19, 1887, made a recalculation of the cabida total, with the result that the overplus was found to be 21,231 hectares and a fraction instead of 21,203 hectares and a fraction as originally ascertained. A corrected valuation of the property was thereupon made (R., 293) and the proceedings again sent to Mexico for final approval. May 3, 1887, the department of public works (R., 296, 297) recites that they have examined the survey of the so-called demasias of the San Pedro ranch and have observed that upon such survey "no monuments were found that would determine the limits or boundaries of said ranch," and that the courses indicated in the original survey are so confusing that when attempting to follow them, one goes and returns repeatedly over

the same line without its being possible to circumscribe with this data any perimeter whatever. It was accordingly ordered as follows (R., 296, 297):

These premises being established, it follows logically: First, that the ranch of San Pedro has no known boundaries nor boundaries that can be determined, and consequently that that ranch has no overplus (demasias), for the existence of this implies necessarily the existence of boundaries, so that the land denounced can not be considered as overplus (demasias), but properly as vacant public land (terreno baldio). Second, that the engineer, Pedro B. Molera, made an arbitrary survey, for he started from the point which he selected without other reason than his own free will, measured the surface of the ground that suited his pleasure, and followed the courses he thought convenient, for he ignored the only one indicated with precision in the minutes of the primitive survey. For the reasons stated the President of the Republie, to whom a report of the matter was made, has seen fit to order: First, the adjudication of the land improperly called overplus (demasias) of the ranch of San Pedro, which that district court decreed under date of June 22, 1886, in favor of citizen Manuel Elias and associates, is not approved. Second, notify the office of the chief of the treasury in the State of Sonora to register said land and the public treasury to enter into possession of it, except the part of said land which was sold to Messrs. McManus & Sons and for which the proper title has already been issued.

On June 20, 1887 (R., 297), the same department of public works, referring to the order last quoted "which denied in an absolute manner the pretended adjudication of said public lands (baldios) to said citizens, Manuel Elias and his associates," states that as a matter of equity it revokes said order and allows the purchase of said property as public lands so far as the same does not conflict with the grant to McManus & Sons adjacent thereto. On July 4, 1887 (R., 299), upon petition of Elias, Ignacio Bonillas was appointed as surveyor for the purpose of going to the premises and separating the McManus land from those sought by Elias, and thereupon to make a report that would pave the way to the final purchase of the balance by the Elias family. From Mr. Bonillas's survey (R., 301, 304, 305), which appears as plat No. 1, attached to Government's Exhibit 5, opposite page 368, it would be seen that the total area of the San Pedro ranch, after cutting off the McManus portion, was 22,058 hectares, 11 ares, 8 centares, "from which subtracting the legal area (cabida legal) of 7,022 hectares, 44 ares, there remains an excess or overplus (demasias) of 15,035 hectares, 67 ares, 8 centares." On February 24, 1888 (R., 306), the President of the Republic approved the adjudication of this overplus in favor of said Elias and associates and ordered the proper title issued to them upon the payment of the proper amount. From the record, pages 306 and 307, it appears that the proper amount was paid for the demasias, and on October 15, 1888, Alejandro Elias receipted for the title of said

demasias issued by President Porfirio Diaz, dated February 24, 1888.

This very interesting and instructive expediente is in itself a commentary on the Mexican system of administering upon an excess when found within the exterior boundaries of a grant made by that Government or its predecessor in sovereignty. The system being in short was that the cabida legal, the land originally purchased and paid for, was segregated by proper survev and the remaining amount was the subject of purchase from the National Government at the rates fixed by law. This expediente shows that so far as the present case is concerned the 4 sitios covered by the original grant was located by the Mexican Government within its territory at the ancient ranch of San Pedro, and that thereupon the owners of said cabida legal secured patent from the National Government for the balance. It is worthy of remark that not an acre of this legal area, located by the Mexican Government in favor of the Eliases, in satisfaction of their ancient right under the grant of 1821, lies within the survey made by Contzen and presented in evidence in this cause.

The Government also introduced in evidence as its Exhibit 6 (R., 317) the expediente of an adverse suit brought by Plutarco Elias, representing himself and his mother and brothers, on the denouncement of the overplus (demasias) of the Agua Prieta grant made by Camou Brothers, which said grant, so far as it is claimed within the United States, is involved in the case of

Ainsa administrator v. United States, No. 40, present term of this court. That expediente begins November 15, 1880, with a petition by Elias to the district judge of Guaymas, Mexico, opposing the denouncement of the demasias of said ranch by Camou on a number of grounds, among them being apparently the contention that in purchasing from the Elias family the Agua Prieta grant Camou had purchased only the cabida legal or legal area of 32 sitios, and had not purchased the demasias or excess over the cabida legal within the boundaries.

Responding to this contention, Mr. Camou, on November 7, 1880 (R., 319-322), says:

It appears that the adverse party understands that the Messrs. Elias sold only 32 sitios of land, and not their overplus (demasias), and therefore believe that they have some right to them. But such belief is truly erroneous. If the aforesaid deed of sale made mention of only 32 sitios, it was because these appear covered by the titles which they delivered, and which in due form I inclose on forty-four written leaves, * On the other hand, it does not appear in the deed of sale that the vendors had reserved any right whatever with respect to the aforesaid overplus (demasias), nor could such reservation exist, inasmuch as at the time of its execution they belonged to the federation, and it was not till the 22d of July, 1863, when the President of the Republic, competently authorized, conceded to the possessors, and by way of grace, the authority to denounce them to the extent they had, for a certain remuneration.

On June 6, 1887 (R., 322), in deciding the matter the district judge recites the fact that the Elias family have already denounced a large area of demasias within the Republic of Mexico, and mentions among other tracts so denounced by them (R., 323) the quantity of land secured as overplus of San Pedro, the process of securing which by the Eliases has just been discussed in connection with plaintiff's Exhibit 5: and the district judge thereupon further calls attention to the fact that there corresponds to each of said Eliases, in consequence of said denouncements, a grant of more than the 2,500 hectares, which they are allowed to obtain under the law of vacant lands of July 20, 1863, article 2. He then quotes (R., 324) from certain regulations of the department of public works in which the method of acquiring demasias and other vacant lands (baldios) is set forth, and shows from said order of the department of public works that demasias or overplus within a grant is on exactly the same basis as other public lands, except that under the provisions of the law of July 22, 1863, a preference in its purchase was given the owner of the legal area. The district judge upon this record holds that the Elias family, the contestants, have no right to be admitted as denouncers, since they have already obtained an area greater than that designated by the law, and for that reason are incapacitated from obtaining more vacant land (baldio) in the Republic.

This proceeding is relevant when it is recalled that these Eliases are the predecessors in title of the plaintiff in this cause; that plaintiff is seeking here to secure a confirmation from the United States of a large area in excess of the cabida legal, and that under the proceedings just referred to the Eliases are held to be entitled to no more demasias within the Republic of Mexico, having exhausted their right by its previous exercise. It can hardly be contended that the United States is bound to give to the owners of the San Pedro grant more than the Mexican Government, the maker of that grant, is bound to give them.

The cause was submitted on the proofs just referred to on June 2, 1899 (R., 327); and on the 27th day of November, 1899 (R., 329), the court entered a decree rejecting the grant and dismissing the petition. The opinion of the court was rendered through Mr. Justice Fuller (R., 328), and the ground of rejection, without passing on the other contentions urged by the United States, was the fact that the owners of the grant had secured full satisfaction from the Mexican Government and within its territory of all they were entitled to—the 4 sitios bought and paid for.

An appeal was sued out by claimant on November 27, 1899 (R., 328).

BRIEF.

The argument presented following will have chief relation to the area of the grant, whether or not it has been satisfied by the Mexican Government, and its location in the Republic of Mexico.

There is also a claim made for an excess (demasias) over the lawful area (cabida legal) covered by the

title, but it is contended that all right to such demasias is barred by the twelfth section of the act of March 3, 1891. Such excess was subject to the uncontrolled disposition of the Mexican Government, and its just disponendi of the same was exercised when the territory was ceded to the United States by the treaty, provided any portion of it should properly fall within the territory ceded.

1.

The extent of this grant is 4 sitios—no more and no less—and the rights of the grantee are limited to the quantity petitioned for, appraised, advertised, sold, and paid for, and for which the formal title was issued twelve years thereafter by the succeeding Government.

The evident intention of the petitioner and the officials was directed to 4 sitios of land as the quantity desired. The entire proceeding is predicated upon such understanding. The minimum purchase money was carefully arrived at by a valuation of each sitio and paid accordingly. After the payment of the purchase money the proceedings seem to have stopped and nothing further was done for eleven years, when Rafael Elias, having acquired the interest of José Jesus Perez, the original petitioner and purchaser, applied to the treasurer-general of the State of Sonora for recognition of his right and the issuance of final title to him. Upon investigation by the State officials, it was determined that Elias had properly succeeded to all the rights of Perez and was entitled to have the final title issued to

him, which was done on May 8, 1833, more than twelve years after the payment of the purchase money for said 4 sitios (R., 127 Spanish).

(The translation of the granting clause of this title, found on page 153 of the record, is extremely crude, and for so much thereof as is necessary for the purpose of this brief we substitute our own translation.)

Mendoza construed the expediente as authorizing the issuance of final title to 4 sitios, viz:

Wherefore, in the exercise of the powers which the laws confer upon me, by these presents and in the name of the sovereign State of Sonora, I confer the grant in the form of 4 sitios of land for breeding large cattle and horses, which comprise the place named San Pedro, situate in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Rafael Elias, to whom I grant, give, and adjudicate these lands by way of sale, with all the privileges, guarantees, and stability which the laws provide, etc.

It was also ordered and commanded that the officials "do not permit that the said interested party nor his successors be in any manner disturbed in their peaceful enjoyment, nor molested in the free use, exercise, proprietorship, dominion, and possession of the said 4 sitios of land which comprise the place named San Pedro." (R., 127.)

Taking the final granting clause and the expediente, commencing with the petition, the great reiteration of the quantity of land as 4 sitios running all through the proceedings leaves no doubt as to the intention of the parties, and brings the case clearly within the controlling authority upon this identical question of the following decision of this court:

> Ainsa v. United States, 161 U. S., 208. United States v. Maish, 171 U. S., 277. Ely's Administrators v. United States, 171 U. S., 220. Perrin v. United States, 171 U. S., 292.

If there were any doubt as to the extent of the land covered by the title and intended by the proceedings, it will be removed by an examination of the law under which the grant was made, which constituted a limitation upon the power of the officials to make grants of land, and should be considered equivalent to directions and notice to petitioners for the same.

This grant was made, as shown by the petition of Perez (R., 231), "pursuant to the provisions of the national laws and the terms of the royal cedula of February 14, 1805." That cedula provides (Reynolds, p. 72) that "there should not be adjudged nor granted more than 3 or 4 sitios to the wealthy and 2 to the poor." And the reason for this limitation, as stated in the cedula, is as follows (Reynolds, 72):

That the superior board, in view of that which has been decided, and considering that the settlement of a *sitio* of a league in extent was very difficult for a person of large means, and that lands of large area were held without this legal obligation having been fulfilled, to the prejudice of others, decided in their decree, etc. This limitation is construed by Perez in his petition for this grant, in which, after referring to the fact that his application is pursuant to the terms of that cedula, he prays that proceedings be initiated for the final sale to him of "the 4 sitios" (R., 231). Perez had nowhere in his petition mentioned sitios, so that the 4 sitios referred to must be those allowed in the cedula under which he prays for the grant, the cedula of 1805. Thus he himself recognized the limitation imposed by law on the granting power and invoked the grant subject to this limitation, and his successors in interest at the present day can not claim more than this amount.

Under the terms of that cedula, irrespective of the recitals of the petition or the mention of quantity throughout the proceedings, the grantee was limited, as a matter of law, to 4 sitios, so that to the extent that the proceedings covered more than 4 sitios they were void as made without authority. That this is the proper construction of the limitation imposed by the said cedula is recognized not only in the petition presented by Perez, but also in other proceedings taken before the Mexican Government and which form a part of the history of that country's attitude toward its public lands. Thus in the report made by Special Agents Tipton and Flipper, dated April 13, 1897, giving the result of an examination of the archives at Hermosillo, Sonora, Mexico, which report was presented to this court in connection with the Ely case (171 U.S., 220). there is found on page 93 a syllabus of the expediente of the San Rafael de la Noria grant. In that case the proceedings were initiated on March 29, 1813, and went

through various official channels until they reached the vicerov at Mexico in 1816. On November 26, 1816, the vicerov referred the expediente to the attorney of the royal treasury. On December 31, 1816, the attorney recommended that the expediente be approved for 4 sitios instead of 5, as the amount of land was limited to 4 sitios for one person, and that husband and wife were one person. This expediente further shows that proceedings were thereupon had to segregate the 4 sitios from the original 5 and pay back the value of the one rejected. This proceeding is instructive not only as showing that there was a recognized limitation of the quantity grantable to any one party, but also as indicating the importance attached to this matter of quantity by the Spanish and Mexican officials, and as showing that it was the controlling element in all of their grants.

11.

That the securing to the owners of the grant of full satisfaction of its lawful area (cabida legal) by the Mexican Government is conclusive of the case here presented is distinctly held in *Ainsa v. United States* (161 U. S., 208, 234), where it is said:

We have referred to the proceedings of 1882, 1886 in Mexico as furnishing persuasive evidence of the proper construction of this grant under Mexican law, and it may be further observed that the adjudication of the overplus required the location of the 7½ sitios, which location Mexico, as the granting Government.

assumed it had the right to make, and made out of the land within its jurisdiction. In this way the grant was satisfied by the receipt of all the grantees had bought and were entitled to under the Mexican law, the result as to the overplus inuring to Camou's cotenants by the terms of his petition.

This principle was reaffirmed by the Supreme Court in *Ely's case* (171–U. S., p. 240), where, in discussing the Ainsa case, it is said:

In that [the Ainsa] case it appeared that while the boundaries of the survey extended into the territory ceded by Mexico to the United States, the grantee had taken and was in possession of land still remaining within the limits of Mexico to the full extent which he had purchased and paid for, and therefore no legal or equitable claim existed against the United States in reference to the land within the ceded territory.

These two cases are on all fours with the case now under consideration. Here, as there, the quantity purchased and paid for has been satisfied by the Mexican Government out of lands within its jurisdiction on the application of claimant's predecessors in title. To confirm this claim would be to give to the petitioners what their grantors got years ago from the other Government—to recognize this title twice and as applying to two separate tracts, when there is no principle of law or common justice that gives it a claim to more than one recognition.

III.

The petition in this case was filed on May 29, 1897. and thus over four years after the time fixed by section 12 of the act of March 3, 1891. The claim is therefore "barred" and is to be deemed and taken as abandoned. This is at least true as to so much of the land as was held by imperfect title at the date of the treaty; and whatever may be the status of the cabida legal of 4 sitios, it must be admitted by the learned counsel who are claiming so much as to the status of the title to the demasias that the same were not held by perfect title in 1853, the purchase money never having been paid; so that the plain limitation of the land-court act precludes a recognition of this title beyond the 4 sitios or cabida legal. Since, as has been hereinbefore pointed out, the cabida legal has been located by the Mexican Government in its own territory, it is not anticipated that this court will consider seriously a proposition to give the claimant a tract of 4 sitios on the American side of the international boundary line, when there has already been given that quantity on the Mexican side of the line in satisfaction thereof.

IV.

The entire grant (cabida total) lies entirely within the Republic of Mexico.

If it shall turn out that this contention on behalf of the Government is well founded, the other questions are of no importance in the case.

A rational interpretation of the proceedings taken in 1821 relative to the survey of the land establishes the fact that 4 sitios was the amount of land attempted to be segregated. The locus of the tract which the survey included was the depopulated place of San Pedro, close to the abandoned place of Las Nutrias. (R., 230–231.)

The surveyor, with assistants, in compliance with the usual formality attending such proceedings, on May 3, 1821 (R., 234), made an order that, as there are no adjoining owners to summons, public notice summoning whomever might be thought to have a better right, should be posted.

On May 17, 1821 (R., 235), Manuel Antunes, from the "place of Terrenate," acknowledged the summons stating he would be present to point out the lands which he intended to register, etc.

On the following day, May 18, 1821 (R., 235), "in the field, place of San Pedro," Manuel Antunes "appeared in person and stated that they could proceed to the survey from the house of San Pedro down the river, without any damage resulting to him in said direction, but going up the river, he would be damaged." Rafael Salas, attorney for Perez, took exception to Antunes's request, "on account of the delay that would result, to the prejudice of his party, by depriving him of the benefit of the water produced by the marsh (cienega) which is the mother of these pastures (ejidos), for which reason the survey in behalf of his principal would be useless." The contention was compromised, and they "agreed to divide the water of the marsh in halves for the benefit of the farms."

This marsh (cienega) above the ranch house of San Pedro is well known and exists to-day near the junction of the Arroyo de Las Nutrias with the San Pedro River and up the San Pedro River from the San Pedro house. This cienega is about 2 miles above the house of San Pedro, and there are no other cienegas between this one and the international boundary line.

It is apparent that the old house giving locus to the tract was in existence at the time of the primitive survey in 1821. The old place of Las Nutrias is in the vicinity of the ranch house of San Pedro and from 2 to 3 miles to the southwest (testimony of Mr. Flipper, R., 60–62.)

The house of San Pedro, referred to in the testimony, was the ancestral and is the present abode of the Elias family, by the occupation of which the entire San Pedro estate was supposed to be held in constructive possession. No other spot along the entire river has ever had any such designation as the "place of San Pedro." The general direction of the San Pedro River is from south to north, the maps all indicating it to run somewhat east of north.

Upon the compromise agreement between Antunes and Salas, attorney for Pérez, being entered of record, the survey was commenced. It must have started somewhere between the marsh (ciénega) and the old house of San Pedro, so that both parties might have its benefits, and certainly above the old house of San Pedro, otherwise the compromise would have been meaningless, for Antunes was willing they should commence and run from the house down the river.

The important object to be located, however, is the "cañon of the Bachata," designated as the northern or down-river terminus of the first line. If this can be accomplished the controversy is simplified; if it can not, then the San Pedro has no known or discoverable boundaries, and must fail for want of description identifying any segregated tract of land. The calls of the primitive survey can be found, locating the grant south of the international boundary line, if one will attempt in good faith to retrace the steps of the original surveyor; and to this end the notes of the primitive survey should not be laid aside, but, as far as possible, control the investigation on the ground.

FIRST LINE. (R., 235-236.)

The parties having agreed, * * * 1 caused a monument to be placed at a rectangular corner, from which, taking the course southwest to northwest, there were measured and counted 50 cords, the last of which terminated down the river from the house, on the edge of the ford, on the bank, where I had a cross monument placed.

The courses given (southwest to northwest) are impossible, but it is perfectly evident that this line was run from a point up the river from the San Pedro house, thence down the river in a northerly direction, the first 50 cords ending on the bank of the river near a ford. Continuing this line, 200 more cords were measured, at the end of each 50 cords of which monuments were placed, the last terminating "in the cañon of the Bachata, where I had a cross monument placed, a

general boundary and dividing rectangular corner, this side line inclosing in the figure of a true square 200 cords, which make 2½ leagues."

This was certainly a "side line" which ended in the cañon of the Bachata. It was evidently run in a direction somewhat west of north and terminated "in the cañon of the Bachata (where I had a cross monument placed), general boundary and dividing rectangular corner, this side line inclosing and in the figure of a true square 200 cords, which make $2\frac{1}{2}$ leagues."

Whatever may have been the true distance, the line was run from the starting point to the "cañon of the Bachata" and was a "side line." It was run down the river from the starting point, and the first cross monument at the end of 50 cords was evidently below the ranch house and on the bank of the San Pedro River. The next 50 cords terminated in the same (San Pedro) valley, at the edge of a hillock (loma), distant 3 cords, "where I had a corner monument placed;" the next 50 cords terminated in front of the Guachuca (Huachuca) Mountains, "where I had a cross monument placed on a rocky hillock (loma);" the next 50 cords terminated "on a cat's claw (chinosa) table-land, where I had a corner monument placed," and the last 50 cords terminated "in the cañon of the Bachata."

There seems to have been five laps of 50 cords each from the starting to the termination of this first line, making 250 cords instead of 200. It is beyond controversy that the Huachuca Mountains are on the west side of the San Pedro River. Although they do not

extend very far into Mexico, they are quite far enough below the line to answer the call at the end of the third 50 cords of the measurement. The Huachuca Mountains on the west side of the San Pedro River had some significance in fixing the direction and location of this line and as fixing their proximity to the end of the third 50 cords.

SECOND LINE (R., 236).

The second line commenced where the first terminated, "in the canon of the Bachata," and formed at said place with the first line a "general boundary and dividing rectangular corner." The general direction of this line was substantially at right angles to the first, and terminated, after crossing the river, at the "slope of the peak," which is admittedly a peak of the San José Mountains, some distance to the east of the San Pedro River. The "slope of the peak," fixed by plaintiffs' surveyors some distance south of the international boundary line and on the slope of a high peak of the San José Mountains, is admitted by the Government to be the point designated in the primitive survey as the termination of the second line.

It would seem absolutely necessary for this second line to run from west to east in order to cross the river and terminate on the "slope of the peak" of the San José Mountains.

This line commenced at the Bachata Cañon; the first 50 cords terminated "in the middle of the valley of the San Pedro River." The second 50 cords terminated "just after crossing the river, at the edge of a hillock

(loma);" the third 50 cords terminated "in the Arroyo de las Baras;" the fourth 50 cords terminatad "in a thicket of dark brush;" and the fifth and last 50 cords of the line terminated "on the slope of the peak where I had a monument placed, a general rectangular corner, this measurement inclosing 250 cords, which make 2½ leagues for its side." This was evidently a side line. The survey was then concluded for the day.

Whatever may have been the correct distance, the line commenced at the or a canon of the Bachata on the west side of the San Pedro River and terminated on "the slope of the peak" of the San José Mountains on the east and formed a side line of the contemplated "figure of a true square."

From the admitted location of the "slope of the peak," upon which Contzen found the monument ("pile of stones"), and the indisputable fact, disclosed by the minutes of the survey in 1821, that the line from the "cañon of the Bachata" to the "slope of the peak" crossed the San Pedro River, it is certain that the Bachata Cañon and the monument on the slope of the peak must be on opposite sides of the San Pedro River. It seems that ordinary care and prudence would have suggested to Roskruge and Contzen, before attempting to fix definitely the location of the "cañon of the Bachata," that an examination should be made on the west side of the San Pedro River and Valley to see whether the topographical features of that portion of the country would throw any light upon the description of the terminus of the first line

and the beginning of the second, and also to discover if the monument ("pile of stones") existed on that side, near a large canyon containing the bachata bush. Had such an examination been conducted, they would no doubt have found conditions just exactly as described by Special Agents Tipton and Flipper after a careful examination on the ground under the immediate supervision of Mr. Pope, one of the counsel for the Government (R., 61–63, 92, 94, and 101).

It seems that appellants' surveyors avoided with extreme care any attempt to give the notes of the primitive survey any interpretation, or to investigate the topographical features of the country west of the San Pedro River or south of the line (R., 30-37). It is not at all probable that canons on the edge of the San Pedro River Valley and coming out of the mountains on either side possessed any definite names as early as May, 1821, particularly in an abandoned and uninhabited country, and the name no doubt was given by the surveyors at the time from the prevalence of the bachata bush therein. The largest well-defined canon on the west side of the river coming out of the Huachaca Mountains and containing the bachata bush, and having the "pile of stones" so convincing to land-grant claimants and their surveyors as monuments of landgrant boundaries, situate on the point of the mesa at the edge of the cañon where it comes into the San Pedro Valley, was found. This monument at the edge of the canon is 2.70 miles due south of the international boundary line (defendant's Exhibit No. 7, R., 326), and is 2.86 miles from monument No. 98 of the international boundary (ibid.). The San Pedro River is not laid down on this map (ibid.), but crosses the line from southwest to northeast some considerable distance east of said monument No. 98. (See plaintiffs' Exhibit No. 28, R., 204.)

If this canon located by Flipper and Tipton on the western edge of the San Pedro Valley be taken as the terminus or north end of the first line and the beginning of the second line, and the monument on the "slope of the peak" of the San José Mountains is correctly located by Contzen—and it is conceded by the Government to be correct—be taken as the terminus of the second line, then the location of the San Pedro grant is easily determined, and the recitals of the primitive survey can receive a rational interpretation and become perfectly intelligible.

It is insisted by the Government that by fixing the Bachata Cañon at the point on the western edge of the San Pedro Valley 2 70 miles due south of the international boundary line it comports with every intelligible recital of the expediente; but its location on the east side of the river would be arbitrary and render impossible any significance to the other calls. It is submitted that the monument on the "slope of the peak" of the San José Mountains, being conceded to be the point called for in the minutes of the primitive survey as the termination of the second line, there is no escape from the correctness of the location by Flipper and Tipton of the "cañon of the Bachata" on

the west side of the river with its monument ("pile of stones") 2.70 miles due south of the international boundary.

This second line was a side line, and at the cañon of the Bachata formed a right angle to the first, and must be the north boundary of the San Pedro grant as surveyed in 1821. If the Government is correct in this conclusion the entire grant is south of the line, and we have no further interest in the premises and the petition should be dismissed. But it is deemed proper to follow out the primitive survey.

THIRD LINE (R, 237).

The third line commenced where the second terminated, "on the slope of the peak" of the San José Mountains, forming at said point by its intersection with the second line the "general rectangular corner," and must have been run in a southerly direction so as to form the angle at the "slope of the peak," and be parallel with the first line so as to form the opposite side of the contemplated "figure of a true square."

The line started at the monument on the "slope of the peak;" the first 50 cords terminated "in a dense thicket of brush;" the second 50 cords terminated "on the Arroyo del Malpais;" the third 50 cords terminated "on the rise to a red table-land;" the fourth and last 50 cords terminated "on the same table-land, where I had a monument placed, a general boundary and dividing rectangular corner."

The examination by Flipper and Tipton on the east side of the river resulted in the discovery of malpais rock, thickets of dark brush and red mesa. (R., 62–64 and 102.) The monument on the red table-land (mesa) was not discovered, but the object itself answers sufficiently to fix approximately the termination of this third line at its southern end. It will be observed that the surveyor does not state the length of this line, but the line seems to terminate on the red table-land at the end of the fourth measurement of 50 cords.

FOURTH LINE (R., 237).

The fourth line was not measured; nor was this necessary. To close the figure was simply to project a line from the termination of the third line "on the same (red) table land" to the point of beginning, somewhere between the cienega and the house of San Pedro; hence the surveyor closed the survey and figure by stating: "There were assumed to be inclosed and measured 250 cords, which make 2½ leagues; with which operation there were located, the sides measured, surveyed, and the area determined of 4 sitios of land for large stock," etc.

If the muniments of title upon which this case is predicated and the recitals therein identifying the land included within the segregating boundaries possess any verity, it needs not the aid of experts to determine that an attempt was made to lay off the land in the "figure of a true square," including within its perimeter 4 sitios. The fact that the figure circumscribed according to the measurements is not a "true square" can be ascribed to ignorance or carelessness, and possibly both. But whatever geometrical figure was laid off included the

old house at the depopulated place down the San Pedro River close to the abandoned place of Las Nutrias. (R., 231; see testimony of Tipton, R., 100.)

The old house mentioned in the survey of 1821 fixes the locus of the tract, and no survey is entitled to serious consideration which leaves out the very object that identifies the tract on the San Pedro River from the vast body of public domain along its course. It has been shown by the evidence that no other place along the river has ever been known by that name, yet Mr. Contzen gives it no consideration and leaves it 5 or 6 miles south of his south line.

This old ranch castle, with its towers, stands in the valley a sentinel warning the passers-by that here is the San Pedro land grant, the ancient estate of the Eliases. To include this castle in the grant, whether measured by quantity, by courses and distances, or by natural objects, is to forever exclude any portion of the San Pedro grant from the territory of the United States.

CONTZEN'S MAP (PLAINTIFFS' EXHIBIT 28, R., 204).

Had Mr. Contzen constructed his map by fixing the north boundary where he has placed the south he probably would have included the San Pedro grant within his lines, provided a few "piles of stones" for monuments were discoverable, and it is believed that this country is sufficiently prolific in this regard to satisfy this requirement for him as well as other eminent surveyors who have from time to time attempted the location or relocation of land grants in southern Arizona. He no doubt would have given more attention to the

descriptive calls of the primitive survey, and possibly would have run the perimeter or sides of the contemplated "figure of a true square," as was evidently attempted by the original surveyor, instead of radiating diagonal lines from an assumed center over 10 miles north of where the primitive field notes clearly and certainly fix the initial point of the survey as above the ranch house of San Pedro and in the vicinity of the cienega. Had Contzen and those accompanying him taken the ordinary precaution to make a general reconnoissance of the country up the San Pedro Valley as far as the well-known San Pedro house of the Eliases, from whom his clients derived title. and honestly attempted to include the place of San Pedro within his outlines, some charity might be extended to him in dealing with his evident weakness; but it is apparent, from his testimony and the map which he attempted to foist upon the court below, that no attention was given the descriptive calls of the primitive survey. He was evidently willing to be misled by Roskruge's location of the south boundary of the San Rafael del Valle grant north of the international boundary line, and to start his survey of the San Pedro by tying to it for the north line of the San Pedro grant, although such course might be at the expense of the true location and result in sacrificing the very place which gave his grant its name, and the desire for the possession of which brought the application of Perez into existence.

His proper course, and as well that of Roskruge, should have been to determine the north boundary of the San Pedro grant first, which, having been accomplished, would become the south line of the cabida total of the San Rafael del Valle grant. It will be noted that the San Pedro survey was made May 18 and 19, 1821 (R., 236, 237), and that of the San Rafael del Valle on August 21,1827 (R., 199); and it is to be pertinently remarked that the field notes of the primitive survey of the latter grant recite that (R., 199)—

At the place named San Rafael, on the 21st day of the month of August, 1827, I, the said judge and surveyor, for the purpose of commencing the survey of the lands denounced by the citizen Rafael Elias, delivered to the officers a cord well twisted and greased, and a Castillian vara, with which they measured and counted on said cord fifty varas; and when this was done they attached a lance to each end of said cord, and in presence of the interested party, the measurement was commenced at a point selected as the center, which was at some hills; and running south there was measured and counted two hundred cords, the line terminating at the line of the rancho of San Pedro, granted to Don Jesus Ferez, and in his name was present the administrator of said rancho with documents showing that his measurements extended to that point, the monuments of which existing at that place being the boundary of both parties interested.

It seems almost indisputable that the location of the north line of the San Pedro grant was a line extending from a cañon of Bachata coming out of the Huachaca Mountains, which line ran eastwardly to the monument

on the "slope of the peak" of the San José Mountains. and in its course crossed the river; yet Roskruge and Contzen adopt as the southeast corner of the San Rafael del Valle grant and the northeast corner of the San Pedro grant a pile of stones which they find 21 miles east of the San Pedro River, and this because it happens to be situate in a cañon containing bachata brush, which is not the only one in that country, and because Concepción Elias said it was the Bachata Cañon. San Rafael del Valle survey says nothing about a cañon of Bachata, and its location has no relation to it, except in so far as it might furnish a correct location of the north line of the San Pedro grant, and this was studiously avoided by Roskruge and Contzen by their adopting the pile of stones situate near a cañon containing bachata brush, and 21 miles east of the river, as a common corner, and then projecting the dividing line west to any point which might please the fancy of Contzen and his friend Cobb.

It is quite obvious that the south line of the San Rafael del Valle grant can not be located without locating the north line of the San Pedro, and not a point of the latter can be fairly or honestly located upon the canon of the Bachata east of the San Pedro River, and almost due north from the monument on "the slope of the peak" of the San José Mountains, distant, according to Contzen's map, about 10 miles. If the San Rafael del Valle south boundary is placed at the north boundary of the San Pedro, and such would seem to be necessary from the calls of that grant (R., 199), then the

San Rafael del Valle extends between 9 and 10 miles farther south and up the San Pedro River than Roskruge has placed it, and the area within which its 4 sitios can be floated is materially accentuated. The bearing that the case at bar has directly upon that grant (United States v. Camou, No. 229 O. T., 1900 and now No. 35 O. T., 1901, under submission) can readily be appreciated.

The title papers of this (San Pedro) grant were introduced in evidence in the San Rafael del Valle case as plaintiff's Exhibit No. 8. (See San Rafael del Valle Record, pp. 130-154 and 154-180.) The translation of the courses are incorrect, but as they go and come over the same line they are ignored. The purpose of their introduction was to furnish some evidence of the location of the south boundary of the San Rafael del Valle, wherein the north boundary of the San Pedro, as fixed in May, 1821, six years previously, was called as far as the south line of the San Rafael del Valle. Hence, the Government made its contention in that case that the south line of the San Rafael del Valle, as fixed by Roskruge, was 10 miles too far north to touch the San Pedro grant, which would make the San Rafael del Valle extend 231 miles from the limy hill on the north to the San Pedro north boundary, instead of about 134 miles, as estimated by Mr. Roskruge; and the pertinency of the suggestion of the Government's counsel, made at the time of the submission to the court of the San Rafael del Valle case, that a consideration of both of these cases together and at the

same time was necessary to a proper solution of the controversies involved now becomes forcibly apparent.

It is urged, however, that the survey as made by Mr. Contzen carries the boundaries to the natural objects named in the expediente, whereas the Government's location of the grant does not. This, it is respectfully submitted, is not true under the proofs. The claimants' survey does not accord with the natural objects of the expediente, while a survey executed on the lines shown by defendant's exhibit 8 would find such objects at the place called for by the expediente—and that within the Republic of Mexico. At the risk of some repetition, a few of the discrepancies between the primitive and the claimants' survey will now be pointed out.

Messrs. Flipper and Tipton both testified on the trial that there was nothing in the *expediente* to indicate that the grant was surveyed from a center and that there was everything—as plain as language could make it—to show that it was not so surveyed. It is scarcely necessary to do more than to read the proceedings of survey to show how the survey was made. The surveyor began at a point above the house of San Pedro, measured thence 50 cords on a course which is unintelligible, but "down the river" until he came to a point below the house of San Pedro on the bank of a ford, where he had a *cross* monument placed. Mr. Flipper very clearly explained and illustrated to the court the appropriateness of designating this as a cross monument, being that with respect to the first of the 4 sitios, if the

grant were surveyed by exterior. He further explained the utter lack of significance it would have were it surveved from a center. Mr. Contzen himself admitted that on his center theory of the survey it had no significance. From this point the surveyor continued 50 cords more to what he designates as a corner monument. This, as Mr. Flipper explained, has a clearly defined meaning if the survey were made by exterior, whereas it is an entirely senseless designation if the survey were from a center. The same observations apply to the other and frequent uses of the terms "cross" and "corner" monuments found throughout the expedieute. The surveyor continued on this line until he reaches the end of 250 cords, where he places a "general boundary and dividing rectangular corner." This designation means a point at which two lines come together at right angles, forming a corner, and would be entirely inapplicable to a monument at the end of a line running from a center and forming an angle with no other line run. Further, the surveyor says of the line just run: "This side line inclosing, and in the figure of a true square, 200 cords, which make 21 leagues." However we may disagree with the surveyor's mathematics when he says that 200 cords make 21 leagues, there is no explanation of his statement that the line just run is a "side line" except on the theory that it is an exterior line. A comparison of defendant's Exhibit No. 8, which represents the Government's contention as to how this survey was approximately run, with plaintiff's Exhibit No. 28, the Contzen plat, will

show how this first course as originally run accords with the Government's plat. On this last the course just described runs northeast from the center; on the Government's exhibit it runs northwest. Upon reaching the end of the course and the monument there erected the surveyor says: "From there, the compass being set up * * * there were measured," etc. From where? Certainly not from a center, as claimant contends, but from "there," the place where he was, the monument that he had just erected. To say that when the surveyor had described a monument and said he proceeded "from there," he meant from a point miles away is to argue for an evident absurdity. That this does not mean from the center (centro), but from the rectangular corner, "mojonera esquina," just located, is shown by the Spanish at the end of the third course, where in proceeding to the fourth course the words "desde ella" (from there) are used. The pronoun ella is feminine, thus necessarily referring to the feminine antecedent "mojonera esquina." If the place from which the new course was begun was the center, the word centro (center), which is masculine, would require the masculine form "desde el." Further, the last course was not actually run and no monument was placed at the end of it. Had this been run from a center, as represented on the Contzen map, it would have been measured by the surveyor as the others were and a monument would have been erected at the end of it to bound the tract; otherwise the survey would have been manifestly incomplete. On

the Government's theory, however, since the fourth course was simply the line closing the square, there was no necessity either of measuring it or of erecting a monument at the end of it. If the preceding sides had been properly laid off, it was necessarily of the right length and it would "close" on the initial or starting corner. All of the many details of the survey, which show that it was an exterior survey and not such a one as Mr. Contzen delineates, are fully set forth in the testimony presented for the Government in this case, and it does not seem necessary to do more than to refer to that testimony and the expediente to establish the correctness of the Government's location of the canyon of the Bachata west of the San Pedro River, and the "slope of the peak" on the east side, thus fixing the north line and demonstrating the utter fallacy of Contzen's survey and theory upon which his map was constructed.

This is the San Pedro grant, so called from time out of mind. It is asked for as "the depopulated place down the San Pedro River." The proceedings show that the survey was first designated to be from "the house of San Pedro down the river," and was afterwards changed so as to start about 50 cords up the river from the house, the last of the 50 cords terminating "down the river from the house on the edge of the ford." The old house of San Pedro is well known, with its towers and fortifications for defense against the Indians. The settlement of San Pedro, recently the location of a Mexican custom-house, is

equally well known, clustered around this old house and occupied by the retainers of the Eliases, the descendants of the original of this grant. This settlement is about the center of the cabida legal of this grant as laid off by the Mexican authorities, and it is here that the Mexican owners of this grant reside and have always resided, since 1821, when within the limits of the grant at all. Certainly the San Pedro grant when properly laid out must include San Pedro, the place that gives it a name and has been from the earliest days and is now the headquarters of the ranch of its owners. A San Pedro grant without San Pedro is the old story of Hamlet without Hamlet, and yet the south line of Contzen's survey is 4 or 5 miles north of San Pedro. Manifestly such a survey is incorrect.

The petition in the *expediente* is for a tract of land "close to the abandoned place of Las Nutrias." No part of Contzen's survey is within miles of Las Nutrias, whereas the starting point of the survey shown on "Government's Exhibit 8" is at the entrance to the Las Nutrias Valley and at a comparatively short distance therefrom, as is the initial point selected by the Mexican engineer who made the survey under the *demasias* application in 1880–1888.

From the titles it appears that in 1821 a controversy occurred between Perez and Antunes, a neighboring property owner, as to the proper starting point of the survey. Antunes was willing for Perez to have from the house of San Pedro down the river, whereas Perez desired to go farther up the river. This was finally

settled by the division of the cienega. The starting point was thereupon placed at the agreed point, obviously in the vicinity of the cienega, and, as shown by the field notes, about 50 cords above the house. The starting point suggested by the Government and adopted by the Mexican surveyor in the demasias proceedings of 1880-1888 and marked on the ground by a pile of stone which Messrs. Tipton and Flipper located, agrees with this, a cienega being found in the immediate vicinity and about where the Las Nutrias Creek debouches, and the house of San Pedro being found about 50 cords down the river or north therefrom. On the other hand the initial point of Contzen's survey is at least 10 miles from the house of San Pedro and the cienega. Some attempt was made to prove the existence of an old house at Palominos, but the proof shows the houses there have been built within the last twenty years and that there were none there before, and no settlement there until recently. No pretense was made that that settlement was ever called San Pedro or that there is a cienega just above it, as called for in the titles.

It is further claimed by plaintiff that the Bachata cañon, which is the end of the first call, is on the east side of the San Pedro River, running out of the Mule Mountains. Roskruge and Contzen are the only witnesses who say that the Bachata cañon is at that point and they know nothing about the country, except what they had learned in going there to make surveys for the purpose of testifying before the court. Claimants

discreetly abstained from producing any of the Eliases or other Mexicans acquainted with that section of country and the Mexican names applicable thereto to prove this to be Bachata cañon, although Concepcion Elias, one of their alleged witnesses as to this was, as above pointed out, present in court. Counsel did ask Gavino Arriaga, the Government's Mexican witness. about this, and he stated that he had never heard that cañada called by the name of Bachata, although he has been acquainted with that section for the past fifty years. This matter, however, is settled by the expediente. If the survey was made by running exterior lines and not from a center-and this the titles abundantly prove—then the Bachata cañada can not be on the east of the San Pedro. Thus, the first side line terminates at the Bachata cañada; from there the next side line was run to the Picacho, which, it is agreed, is at the San José Mountains, on the east side of the San Pedro (see plats); so that if the Bachata cañon be on the east side of the river a side line connecting it with the Picacho would not cross the San Pedro. However, in the surveyor's notes of May 18, 1821, he says in running the first 50 cords of the second course that it terminated in the middle of the valley of the San Pedro and upon running the second 50 cords, the last of them terminated just after crossing the river at the edge of a hillock (loma). The court has only to notice the fact that a line connecting the Bachata cañada, as located by claimants, and the Picacho would not come within miles of the river, to

see the fallacy of claimants' survey. While it is difficult to state now what was known as Bachata cañada in 1821 it is quite certain that it was west of the river and in about the locality indicated on the map presented by the Government as Exhibit No. 8. Mr. Flipper found at that point a wide cañada—the widest on that side of the river for many miles north and south-near the mouth of which was found an old monument of stones and at the head of which were a number of the shrubs known as "bachata." Mr. Barton, who made an investigation of this grant for the surveyor-general in 1886, or thereabouts, also testified that he understood that the Bachata cañada issued out of the Huachucas about that point. If this cañada be west and not east of the San Pedro, the line running northeast from the center of the Contzen survey has no natural object to guide or limit it and is therefore fanciful.

As fanciful are the other lines of the Contzen survey. Since the title papers contain no intelligible courses, the direction given the four lines radiating from the center of the Contzen survey depends entirely upon the existence of natural objects to control them. The fact that no such object as Bachata Cañon exists toward the northeast to guide the first course has just been discussed. The line toward the southeast (the second course) may be considered as controlled in its direction by the Picacho, which is well known. The third course, which is toward the southwest, was, Mr. Contzen testified, so run because there was "an oak forest" in that direction. The expediente says nothing,

however, about "an oak forest," but mentions only "un monte espeso," a "thick clump of timber or brush." As shown by the proof, there are hundreds of such clumps all over the country, and especially on the east side of the river, where the Government contends this course was run, the country is black with monte composed largely of palo prieto. The fourth course indicates even more forcibly the unreliability of Mr. Contzen's method of surveying this tract. He says he ran this course as he did toward the northwest with no other guide than a pile of stones which he found out on the mesa. Aside from the notoriously uncertain character of a pile of stones as a monument, especially when uncorroborated by natural objects, Mr. Contzen's theory is untenable for the reason that the expediente shows that the course was not run at all and that no monument was placed at the end of it. All that the expediente says on this point is that "from it" (ella), i. e., esquina (feminine) not centro (masculine), "taking the course from southwest to northwest, there were assumed to be inclosed and measured 250 cords, which make 24 leagues." Counsel for claimant was candid enough to admit in his brief in the court below that "the weak point of Mr. Contzen's survey is on the line from the center to the northeast corner"—the course to Bachata Cañon. While there is no doubt that this is "a weak point" of the survey, it has even more to commend it than the courses to the southwest and northwest corners, the one run so as to reach one of the hundreds of clumps of trees in the

locality, and the other run so as to reach a monument that the original surveyor never put there at all.

Much stress seems to be laid by plaintiff on the size of what it is pleased to term the center monument. It is very peculiar that if such a monument were originally erected the expediente says nothing about it. It can hardly be supposed that the surveyor of 1821 would fail to mention so prominent a monument erected as a center, if any such center were ever chosen or constructed. The plaintiff's center of this grant is as mythical as the elaborate waterfalls mentioned in his translation and in witness Cobb's testimony as such a beautiful feature of the landscape and such an enduring monument to the integrity of Contzen's survey.

It is believed that it has conclusively been shown that the entire grant is in the Republic of Mexico, and that the owners have received full satisfaction thereof from the Mexican Government; and that, therefore, the judgment of the Court of Private Land Claims should be affirmed.

Respectfully submitted.

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